

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
GREENBELT DIVISION

J. DOES 1-26,

Plaintiffs,

vs.

ELON MUSK, et al.,

Defendants.

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) Docket Number
) 8:25-cv-00462
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TRANSCRIPT OF PRELIMINARY INJUNCTION HEARING
BEFORE THE HONORABLE THEODORE D. CHUANG
UNITED STATES DISTRICT COURT JUDGE
FRIDAY, FEBRUARY 28, 2025, AT 2:00 P.M.

APPEARANCES:

On Behalf of the Plaintiff:

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(Appearances continued)

COMPUTER-AIDED TRANSCRIPTION OF STENOTYPED NOTES

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P R O C E E D I N G S

(Court called to order.)

DEPUTY CLERK: All rise. The United States District Court for the District of Maryland is now in session. The Honorable Theodore D. Chuang presiding.

THE COURT: Thank you, everyone. Please be seated.

DEPUTY CLERK: The matter now pending before this court is Civil Action Number TDC-25-0462, J. Does 1 through 26 v. Elon Musk, et al. We are here today for the purpose of a hearing on a motion for preliminary injunction.

Counsel, please identify yourselves for the record.

MR. EISEN: Your Honor, Norman Eisen for the plaintiffs, and with me --

MS. MARZIANI: Mimi Marziani, also for the plaintiffs.

MS. STEVENS: Beth Stevens for the plaintiffs.

MR. GONZALEZ: Joaquin Gonzalez for the plaintiffs.

MS. MAYS: Tianna Mays for the plaintiffs.

THE COURT: Good afternoon.

MR. EISEN: Good afternoon, Your Honor.

MR. GARDNER: Good afternoon, Your Honor. Josh Gardner with the United States Department of Justice on behalf of the defendants. And with me are my colleagues Jacob Siler and Christopher Hall.

THE COURT: Good afternoon.

1 So we're here for a hearing on the motion for preliminary
2 injunction. The parties have filed their briefs with exhibits.
3 I've reviewed those.

4 I do have a number of questions, but I also want to give
5 you an opportunity, if there's anything you want to amplify on.

6 It's the plaintiffs' motion, so we'll start with them, and
7 then we'll hear from the defense. And then since it's their
8 motion, I've give the plaintiff a very brief opportunity for
9 rebuttal.

10 In light of the fact that I have questions, I don't know
11 how long it will take to get through some of them -- I'm not
12 going to put a firm clock on each side, but I would say we'll
13 give at least 20 minutes to each side and we'll see if I need
14 more time with you. And then we'll do our best to give the
15 other side equal time, if they want it. So we'll just start
16 with that.

17 Mr. Eisen?

18 **MR. EISEN:** Thank you, Your Honor. Just a couple of
19 housekeeping matters, if I may.

20 By agreement with the government, we would like to submit
21 additional Exhibits Number 65 to 69. We would like to move
22 their admission. This -- these are Twitter posts and other
23 materials -- pardon me, to 70. Twitter posts and other
24 materials that have come into the record since we completed our
25 briefing; as Your Honor knows, fast breaking, and very lively

1 fact pattern here.

2 May I approach?

3 **THE COURT:** Yes, you can hand them to the clerk. And
4 just for the record, since it sounds like neither side is
5 objecting, all the exhibits that were submitted as part of the
6 joint record are subject to consideration on this motion.

7 Okay. Go ahead, then.

8 **MR. EISEN:** Thank you, Your Honor.

9 And then the next issue is the four sealed -- sought
10 sealing of four of our declarations where the contents of these
11 four items would reveal the identity of the declarants, and in
12 our view, expose them to danger.

13 We have provided those materials to the government. We
14 request that the Court admit them subject to the agreed
15 protective order. The protective order has been agreed, but I
16 do not believe, as of last consultation, we had agreement on --
17 on the treatment of these four declarations.

18 I do have those sealed declarations to hand up, proposed
19 sealed declarations.

20 **THE COURT:** Well, are they the same ones I already
21 have? It's Document Number 40 is the motion, and then I think
22 the declarations were previously submitted as 38-1 through
23 something?

24 **MR. EISEN:** I have them marked as -- Your Honor, if I
25 may consult.

1 Your Honor, Ms. Marziani has negotiated these with the
2 government, and she's going to explain the state of play in
3 which ones are and are not in the record.

4 **THE COURT:** Look, I just want to hear argument. I
5 think we can handle these things outside of this process.

6 I thought I signed a protective order that both sides had
7 agreed to, correct?

8 **MR. EISEN:** You did, Your Honor.

9 **THE COURT:** Okay. So there was a motion to seal,
10 which I don't believe was opposed; is that correct?

11 **MR. GARDNER:** That is correct, Your Honor.

12 **THE COURT:** Okay. So I don't know if I issued that,
13 but I don't think we need further argument on that. I think I
14 understand the reasons for that.

15 Other than the general standard question of -- again, as I
16 mentioned earlier, motions to seal are not necessarily purely
17 among the parties, I would be inclined to grant the motion.

18 **MR. EISEN:** Thank you, Your Honor.

19 **THE COURT:** But -- so I don't think we need to argue
20 it any further at this point.

21 **MR. EISEN:** Thank you, Your Honor.

22 We're here today to seek a preliminary injunction on
23 behalf of 26 plaintiffs who have been exposed to what is, in
24 our view, unconstitutional conduct by the defendants, Mr. Musk
25 and DOGE.

1 I will begin by addressing the factual predicate
2 principally in the form of the defendants' own admissions, and
3 those of President Trump.

4 That -- those admissions and the actions that have been
5 taken, in our view, demonstrate again and again that Mr. Musk
6 enjoys a role as a super -- super cabinet member who is a
7 principal officer exercising significant authority in his own
8 right and also through DOGE, Your Honor. And, indeed, Mr. Musk
9 is the most powerful principal officer currently in the
10 government alongside the President of the United States, and
11 one of the most powerful in our nation's history.

12 Ms. Marziani will explain, under the Constitution, why
13 we're likely to succeed on the merits, both in terms of our
14 appointments clause claim, and she will argue also the
15 separation of powers issue that the Court expressed interest
16 in.

17 She will submit that from the time of the founders, Your
18 Honor, to current Supreme Court precedent, the evidence
19 establishes we will likely succeed on the merits that Mr. Musk
20 is a principal officer and that his acts and those of the DOGE
21 are unconstitutional.

22 Finally, my co-counsel, Ms. Stevens, who has spent her
23 past weeks with our 26 plaintiffs and is most familiar with
24 their situation, will submit to the Court the detail. We've
25 provided a mountain of evidence, the vast irreparable harm that

1 these individuals associated with USAID are suffering.

2 She will argue to the Court that the constitutional
3 violations we allege, if you will, the chainsaw that Mr. Musk
4 and his DOGE are applying to the Constitution has torn up these
5 plaintiffs' lives, including cutting some of them off from
6 life, potentially lifesaving services in dangerous places
7 around the world where the United States sent them.

8 Let me start with those party admissions and the other
9 evidence. We've submitted a mountain of it to the Court. I'm
10 just going to pick some of the most important ones.

11 On February 19th, in Florida, President Trump stated --
12 you can find this at Joint Record 568, and the video is at
13 Joint Record 466 -- "I signed an order creating the Department
14 of Government Efficiency, and I put a man named Elon Musk in
15 charge."

16 There, in itself, principal officer. You would not know
17 it to read the declaration of Joshua A. Fisher, which says,
18 Mr. Musk has no actual or formal authority to make government
19 decisions himself.

20 **THE COURT:** So let me ask you this. I know you may
21 have some familiarity with the Executive Branch, with the White
22 House, Executive Office of the President. I mean, there are
23 individuals in the White House, the Chief of Staff, the White
24 House Counsel, others who have very significant roles, and
25 within the Executive Branch, if they were to call over to a

1 cabinet agency, their word would probably be taken as something
2 that needs to be done because it's implicitly viewed as the
3 word of the President.

4 Why is this different from that? And under your theory,
5 are all of those individuals also principal officers?

6 **MR. EISEN:** They are not principal officers, Your
7 Honor. I've had -- I've had the privilege of serving in
8 government in the White House, working closely with the
9 individuals that the government analogizes to.

10 Let's start with the White House Chief of Staff, by
11 agreement, the most powerful individual on the White House
12 staff. He acts as a gatekeeper. He --

13 **THE COURT:** Are you saying Mr. Musk or the Chief of
14 Staff?

15 **MR. EISEN:** No, the White House Chief of Staff acts
16 as a gatekeeper.

17 In my experience, Mr. Musk -- and we're prepared to you
18 introduce substantial additional evidence on this point, if
19 Your Honor wants it.

20 But since you asked, I will tell you, I have never heard
21 of even the most activist Chief of Staffs interfering, as we
22 allege, with congressionally authorized funding of federal
23 agencies, or accessing confidential data siloed across the
24 government, or installing their own people in federal agencies
25 to take control of agency operations where they hire and fire.

1 No White House Chief of Staff has threatened, either on his own
2 or through subordinates, to direct U.S. Marshals to remove
3 government workers from their place of employment. No White
4 House Chief of Staff has canceled congressionally authorized
5 contracts.

6 Richard Nixon's White House Chief of Staff H.R. Haldeman,
7 describe the Chief's job -- and this is the most powerful
8 person. Mr. Musk far outstrips him. Your Honor, he described
9 the Chief's job as not -- quote, not to do the work of
10 government, but to get the work out to where it belongs, out to
11 the departments.

12 Mr. Musk -- we've produced a mountain of evidence. The
13 Court has been very indulgent of the massive piles of
14 declarations and other evidence. Mr. Musk is out there in the
15 departments. It's the opposite of what a White House Chief of
16 Staff does.

17 It's an area of interest of mine.

18 So if the Court will indulge me one more point on this,
19 and I mustn't monopolize all the time, I'll tick through the
20 rest of the evidence, Your Honor, but it was so offensive to me
21 to analogize Mr. Musk's role to what I saw with my own eyes.
22 It bears no resemblance whatsoever.

23 The Brownlow Committee report --

24 **THE COURT:** I'm sorry to offend you with my analogy,
25 Mr. Eisen.

1 **MR. EISEN:** No, you -- quite the opposite, Your
2 Honor, as you can see, I was looking forward to the opportunity
3 to declaim.

4 The Brownlow Committee report to FDR on the ideal White
5 House aide, the shaping of the modern White House Chief of
6 Staff, again, far less powerful, held he or she should remain
7 in the background, issue no orders, make no decisions.

8 So I do not think we have seen, in modern times, anyone as
9 powerful -- other than a president, anyone as powerful as
10 Mr. Musk. He's kind of a supercabinet officer.

11 Having occupied a fair share of my time on the White House
12 comparison, I'm going to quickly tick through some of the main
13 evidence in the voluminous record, if I may, Your Honor.

14 **THE COURT:** Okay. I am interested in, frankly, since
15 you provided a lot of information, what do you consider to be
16 the most -- most significant evidence, but also the most
17 significant specific actions that you're saying is an exercise
18 of significant authority?

19 Because, I mean, it's hard -- it's hard to sort of say,
20 well, it's everywhere, but give me the very best pieces that
21 you can identify.

22 **MR. EISEN:** Yes, there are -- there -- in addition to
23 the admissions, outright admissions that Mr. Musk is acting as
24 a principal officer from Mr. Musk and from the President and
25 many others, you see the impact of Mr. Musk's action through

1 the DOGE at the USAID directly causing the irreparable harm
2 that Ms. Stevens is going to talk about.

3 So, for example, President Trump, on February 22nd tweets,
4 "Elon is doing a great job, but I would like to see him get
5 more aggressive."

6 Then utilizing that discretion as a general request, as a
7 principal officer, Mr. Musk is acting on it.

8 The same day, just a few hours later, Musk tweets,
9 "Consistent with the president's instructions, all federal
10 employees" -- I never heard of anybody having this power. Even
11 the President doesn't e-mail all federal employees -- "all
12 federal employees will shortly receive an e-mail requesting to
13 understand what they get done last week. Failure to respond
14 will be taken as a resignation."

15 He's asserting power endorsed by the President, asserting
16 power career life or death over the entire federal government,
17 Your Honor. And it happens --

18 **THE COURT:** How is that -- how is that different from
19 someone relaying a message from the President? He actually
20 references the President, so is someone who relays a message
21 exercising significant authority, or are they just the
22 messenger?

23 **MR. EISEN:** It -- Your Honor, it's different in the
24 following respects.

25 The President said get aggressive. It's Mr. Musk who

1 formulated the policy, communicated the policy, and as I will
2 explain, executed the policy. That's not relaying a message.

3 When I was working in the White House, I didn't even dare
4 to express what the President thought much less formulate
5 policy for the entire federal government. My title was Special
6 Counsel to the President.

7 And then, of course, as the Court well knows, immediately
8 thereafter, OPM acts on this supercabinet member instruction
9 that delegated authority of the policy he forms. And OPM
10 e-mails everyone in government, "Please reply to this e-mail
11 with approximately five bullets of what you accomplished."

12 The Court knows the rest of the drama. It's in the
13 record.

14 But there's more, Your Honor; it's not just that.

15 Mr. Musk also acts through his DOGE subordinates. And I'm
16 going to finish here subject to any questions the Court may
17 have for me.

18 And DOGE took over OPM systems on January 20th with full
19 systems access. We have a sealed exhibit, 55, John Roe 1,
20 explaining exactly how that happened. We sealed it because
21 revelation of the exhibit will identify the witness.

22 Then you have a DOGE operative, Mr. Gavin Kliger, who
23 obtained systems access to USAID February 1st. That's Exhibit
24 56, John Roe 3 declaration, also under seal.

25 It's called God-level access, Your Honor. And I think we

1 can agree if there's any principal officer, it's God.

2 Mr. Kliger --

3 **THE COURT:** I'm not going to disagree with that.

4 But if -- am I right, though, that historically, the
5 people who have this kind of access are not necessarily cabinet
6 secretaries? I would be surprised if, you know, a cabinet
7 secretary would even know what to do with that level of access.
8 And so isn't it usually some sort of federal government
9 employee who is charged with having that kind of access?

10 **MR. EISEN:** But here's what's different about it,
11 Your Honor. There's usually a normal chain of command with a
12 senate confirmed official, a cabinet official, not as President
13 Trump said, putting -- creating the Department of Government
14 Efficiency and putting a man named Elon Musk in charge.

15 Ms. Marziani will explain why from the founding of the
16 republic, the lack of accountability that that represents.

17 And then you have the DOGE workers who are infiltrating
18 the agency. Mr. Kliger has popped up in agency after agency.
19 He creates a user account, HRannouncements@USAID. This brings
20 it to our plaintiffs, that's the Exhibit 29, the second
21 declaration of John Doe 2, Joint Record 431.

22 And then there's an e-mail, HRannouncements@USAID.gov,
23 that's Exhibit 54, Joint Record 912, from Mr.-- as a result of
24 Mr. Kliger's command of this, as part of Mr. Musk's DOGE
25 operation, ordering a reduction in force.

1 Then Mr. Kliger tells IT staff to delete and recreate
2 HRannouncements@USAID.

3 We have Exhibit 56, sealed, at Paragraph 8, explaining the
4 affect is to prevent others from being able to see the e-mail
5 recipients and administrators.

6 And then finally, just to close the loop, Your Honor, we
7 explain that Mr. Musk called USAID officials to demand DOGE
8 access. And that's Page 26, Paragraph 49 of the complaint,
9 Footnote 38, and it's in the joint record at 183, 184.

10 So this is a level of control that we have never seen in
11 our time, from a White House official, from someone who is not
12 confirmed. He's a beyond-the-power-of-a-cabinet member. He's
13 ranging across the government taking a wrecking ball to our
14 systems. It's clearly an instance of a principal officer.

15 Now, the likelihood of success on the merits is also a
16 matter of filtering this through American law from the time of
17 our founding.

18 But briskly and expeditiously, Your Honor, to present-day
19 Supreme Court opinions both with respect to the appointments
20 clause and separation of powers, no nobody authorized Mr. Musk
21 to tear into Article I and contraindicate that he will use the
22 expression -- it's the last tweet I'm going to leave you
23 with -- "I spent the" -- "We spent the weekend putting USAID
24 into the wood chipper. Could have gone to great parties
25 instead."

1 That's unheard of in our history. It has -- it's against
2 the Constitution.

3 Mr. Musk has no right to destroy agencies that have been
4 congressionally authorized by statutes validly passed pursuant
5 to Article I. So it poses profound appointments clause and
6 separation of powers issues -- issues, Ms. Marziani will speak
7 about those. And then Ms. Stevens about the tremendous harm
8 this wrecking ball has wrought on our 26 actual individual
9 humans.

10 **THE COURT:** Okay. Thank you.

11 Ms. Marziani?

12 **MS. MARZIANI:** Thank you, Your Honor. Mimi Marziani
13 on behalf of the plaintiffs.

14 So at bottom, our appointments clause argument is actually
15 quite simple. And there's very little the parties disagree
16 about as a matter of law, at least as far as I can tell.

17 To be sure, no appointments clause case has ever
18 confronted the unprecedented situation before us today. We
19 just heard quite a bit about that.

20 But I do want to emphasize that the values underlying the
21 case law point us to where this case should be resolved. I'll
22 just name a couple for the Court.

23 In the *Arthrex* case, for instance, Justice Roberts
24 explained that assigning the nomination power to the President
25 guarantees accountability through a quote, unquote, chain of

1 command with the senate sharing accountability for accepting a
2 bad appointment or rejecting a good one.

3 Concurring in *Lucia*, Justice Thomas tells us the exact
4 same thing, the appointment clause maintains, quote, unquote,
5 clear lines of accountability.

6 And you see this in the case law coming up over and over.

7 And it is in this manner that the appointments clause
8 forces what Justice Roberts has called constitutional
9 accountability.

10 So you've heard from my colleague about the extraordinary
11 amount of executive authority Mr. Musk is wielding on behalf of
12 President Trump, again, in his own admission.

13 **THE COURT:** Well, I'm trying to understand what are
14 the two or three specific actions that Mr. Musk took that you
15 say are your best examples of exercise of significant
16 authority?

17 **MS. MARZIANI:** Yep. Absolutely.

18 A couple of responses.

19 First, we have done our absolute best to gather as much
20 evidence as possible outside of discovery, and so we believe,
21 and we have alleged, that Mr. Musk as the de facto DOGE
22 administrator is, in fact, behind significant decisions like
23 canceling contracts, terminating personnel, shutting down
24 offices, and controlling agency data systems.

25 To point to the record, let's take that last piece, for

1 instance, if you -- we have evidence in the record that DOGE
2 is, in fact, still in unilateral control of the back end
3 infrastructure of USAID. So if you'll indulge me, I'm going to
4 connect the dots on a couple pieces of evidence.

5 Joint Record 429 is the exhibit to the second declaration
6 of J. Doe 2. This shows Gavin Kliger, who has been identified
7 in other cases as a DOGE affiliate, and as my colleague
8 mentioned, has been installed across the federal government in
9 a variety of posts bullying the notion that he is just another
10 USAID employee.

11 **THE COURT:** I guess what I'm trying to understand is,
12 why does having technical control over the systems mean that
13 you're exercising significant authority? It's got to be what
14 you do with it, not just that you have control.

15 Because as I said to Mr. Eisen, my assumption, based on
16 the people who said they had it and were kicked out of the
17 room, that those folks weren't principal officers, they were
18 federal employees who had technical expertise who knew how to
19 run the system. So the fact that someone else is coming in and
20 running the system just tells me they are doing what used to be
21 done by a federal employee.

22 So what is it about that aspect or some other action that
23 was taken that is the equivalent of deciding to prosecute
24 somebody or making a decision by an AALJ that has deemed to be
25 significant authority? How is it equivalent?

1 To me, being a systems administrator, which, again, no
2 cabinet member has ever had that role or even known how to do
3 it. I'm not sure -- that's the process, but what's the
4 decision that's being made or the action that's being taken?

5 **MS. MARZIANI:** Absolutely. Absolutely, Your Honor.

6 So we have evidence in the record, again, that DOGE
7 affiliates control the back-end infrastructure. Then you
8 compare to the declaration that the defendants put into the
9 record.

10 Mr. Rubio's letter, Joint Record 422, he says that
11 Mr. Marocco has been undertaking the duties of the Acting
12 Deputy Secretary -- Acting Deputy Administrator of USAID.
13 You'll note that the defendants are very careful to say that
14 Mr. Marocco is not, in fact, the Deputy Administrator of the
15 USAID because he has not been properly appointed.

16 Then contrast that to a recent e-mail that just went out
17 yet again from USAID, Joint Record 440, this is also
18 Paragraph 8 of J. Doe 21's declaration, and Your Honor will see
19 that our plaintiffs received a reduction-in-force e-mail from
20 the phony e-mail address we talked about before, and it
21 purports to come from, quote, unquote, the Acting Deputy
22 Administrator, Pete Marocco.

23 That is something he's never called himself, Your Honor.
24 If you look at his declaration, he's very careful not to
25 identify himself as the actual Acting -- Acting Deputy

1 Administrator.

2 This shows -- this is strong circumstantial evidence that
3 whoever is sending out these e-mails -- and, again, we believe,
4 based on the record evidence, to be Gavin Kliger, is not
5 someone who has been, you know, informed in the nuances of how
6 you appoint people to agencies and instead is just making these
7 reduction-in-force important personnel decisions unilaterally.

8 **THE COURT:** So I think I understand your theory.

9 It does seem circumstantial, though, in terms of the
10 evidence that because it appears as if Mr. Marocco may not have
11 cleared that language, because he would have known better, that
12 he wasn't actually the deputy that -- or acting deputy, that it
13 might have been someone else. Now, whether it was that person
14 individually, Mr. Musk, or some USAID junior person who is not
15 an attorney, I mean, it's not totally clear at this point.

16 So you're saying it's an inference that you want me to
17 draw?

18 **MS. MARZIANI:** Correct, Your Honor, although I would
19 submit that at this point, our burden is to show a likelihood
20 of success on the merits. And we have -- we do not have access
21 to the information in the government's possession. We have
22 produced defendant admissions, firsthand witness declarations,
23 and plaintiff declarations, all of it is supported by
24 investigative reporting. And it all, quite frankly, points in
25 one direction, which is that Mr. Musk has extraordinary

1 authority and that he is directing these DOGE affiliates as
2 they are embedded throughout federal government agencies.

3 **THE COURT:** I thought you said when we were -- I
4 think we had a conference to discuss this hearing, there had
5 been some discussions about discovery. It feels as if these
6 issues, and I think there's a couple of other episodes I think
7 we can probably talk about, where there's really a factual
8 dispute about what happened and who made decisions. And I
9 understand your theory about how I could perhaps infer it with
10 one person.

11 The government has offered, I guess, some more direct
12 evidence, but still not corroborated, not documented evidence
13 to the contrary.

14 So where did those discussions about discovery go? Was --
15 did you ask for certain things? Were they provided? Were they
16 not provided?

17 **MS. MARZIANI:** I will let the Department of Justice
18 speak for itself. But I will share with Your Honor that we
19 inquired about discovery, and it was -- it was, my
20 understanding, not plausible in the short time period.

21 **THE COURT:** Well, isn't it the kind of thing that at
22 some point we need to have to resolve these issues?

23 **MS. MARZIANI:** Absolutely.

24 I mean, look, Your Honor, we are here today because, and
25 as my colleague will explain, we have plaintiffs who are

1 suffering urgent irreparable harm. So we do believe there is
2 relief that should be granted and that we would ask you to
3 grant right now.

4 We also agree that, as I started my presentation -- at the
5 end of the day, I don't think that there is much of a
6 disagreement. You guys might say otherwise, but I don't think
7 there's much of a disagreement on the appointments clause and
8 the separation of power principles and case law. That central
9 disagreement is an issue of fact that would benefit from
10 discovery.

11 **THE COURT:** Right.

12 So in this instance, just going back to the point you
13 raised about whether or not Mr. Marocco actually approved and
14 authorized this e-mail about a reduction in force, and you may
15 want to remind me which reduction in force that was, was
16 that -- you know, how many people, what percentage of the
17 agency.

18 But even assuming that was a decision made by Mr. Musk or
19 someone else under his direction, where is the line on that in
20 the sense that I -- my general assumption is that within the
21 government, certainly if a supervisor wants to arrange for the
22 termination of someone, they don't need the Secretary to sign
23 off on it. I could be wrong. Maybe it's through a delegation.
24 But either way, it's not something the Secretary gets involved
25 in.

1 Obviously, there's civil service rules which typically are
2 applied, so it's not an easy process, but it doesn't
3 necessarily involve a principal officer.

4 So where is the line where you're saying that action was
5 significant authority as opposed to how we generally look at
6 terminations?

7 **MS. MARZIANI:** Absolutely, Your Honor.

8 And I want to note that the case law has not been precise
9 in what constitutes significant authority for officer status
10 under the appointments clause. However, the Court has told us
11 over and over that it has to do with final executive
12 decision-making and things that are -- that are meaningful and
13 that bind the government.

14 We, again, believe that the record evidence -- you know,
15 going back to that weekend of February 1st, which was -- it
16 is -- taking their evidence at best, it's extraordinarily
17 unclear what Mr. Rubio was doing at that point, even if he had,
18 in fact, been designated as the Acting Secretary at USAID. But
19 that was the weekend when, by all the accounts we have
20 gathered, DOGE unilaterally goes into USAID, they take systems
21 access, they send out an e-mail saying that the office is going
22 to be shut down.

23 And if you look at what defendants provided us, it wasn't
24 until after that weekend, February 3rd, when Mr. Rubio sends a
25 letter to Congress informing them of the possibility of a

1 reorganization.

2 So that is a critical time period, and we have alleged all
3 the facts that we can gather at this point, without discovery,
4 in the complaint. And then as we noted, there's this more
5 recent evidence that we have brought to light showing that DOGE
6 is still, as we believe, in control of the back-end operations.

7 **THE COURT:** So -- okay. I agree with you. That
8 period, perhaps, before February 3rd is important.

9 But, again, what are the specific actions? You said final
10 executive action binding the government. What are those
11 specific things that happened that you say were the
12 responsibility of Mr. Musk? Regardless of -- starting with
13 what the actions are, then you can tell me how it connects
14 back.

15 **MS. MARZIANI:** Yes, yes.

16 So in the context of USAID, it is our understanding, and
17 this is also corroborated by the AIDS vaccine case that, of
18 course, is ongoing, that the DOGE affiliates control the
19 contracting system. So they are actually the ones making the
20 decisions about whether or not to release appropriated monies.

21 And that is, in fact -- this is our belief, based on what
22 the evidence we have gathered, that is, in fact, why the
23 government has not been able to comply with the TRO in that
24 other case.

25 In addition, as I mentioned, we have evidence, including,

1 actually most recently, Exhibit 70, which is the new under-seal
2 declaration, which is someone who is terminated -- got a
3 termination letter just on Monday, but she was able to look at
4 the metadata, and the metadata traces back to a gentleman named
5 Luke Farritor, who has -- is a well-known DOGE affiliate. He
6 has been embedded in at least five agencies. And he was the
7 one who actually sent that termination letter.

8 And I understand that defendants might say, well, you
9 know, it's not unusual -- obviously you need subordinates to be
10 sending out the actual termination letter, that's what you have
11 HR for.

12 But what is distinct here, is this gentleman,
13 Mr. Farritor, he is -- it's implausible to think that he could
14 be a legitimate employee across a number of agencies.

15 And so instead, it is our theory here, that the DOGE
16 people are maintaining this back-end control, and then they are
17 using it to exercise the decisions that Mr. Musk makes.

18 **THE COURT:** Let me ask you this. So that was just --
19 was that an individual termination or was it a letter that went
20 to many people, or an e-mail that went to many people, Exhibit
21 70?

22 **MS. MARZIANI:** Well, we first -- Exhibit 70 needs to
23 be admitted. And we will --

24 **THE COURT:** I think we accepted the exhibit.

25 **MS. MARZIANI:** Yeah, you've accepted it. They have

1 agreed. Thank you.

2 So what we have in the record is the metadata on an
3 individual termination letter that this individual received.
4 However --

5 **THE COURT:** Well, who -- I mean, again, I'm trying to
6 find it right now, and I'm not -- who actually signed this
7 letter or listed their name at the bottom? Because I
8 understand your point about the metadata, but usually there's
9 someone taking responsibility for the decision. And I am
10 interested to know, so first of all, was it the Secretary, the
11 Administrator, somebody else? An HR person? And how did that
12 person compare to the person who usually would send such a
13 letter out, you know, before all this started happening?

14 **MS. MARZIANI:** Would Your Honor like me to bring you
15 Exhibit 70?

16 **THE COURT:** Well, I was just -- I was given a packet
17 of exhibits.

18 **MS. MARZIANI:** Yeah, I'm sorry, this one was omitted
19 because it is under seal.

20 **THE COURT:** It only goes up to 69. Yeah. Okay.

21 **MS. MARZIANI:** That's correct.

22 **THE COURT:** You can hand one to the clerk.

23 **MR. GARDNER:** And, counsel, I'm a little confused.
24 My Exhibit 70 was the one you withdrew.

25 **MS. MARZIANI:** That's because we did not update the

1 exhibit list after we sent that to you last night, so we
2 withdrew the Whipple declaration, and this is the new one that
3 we e-mailed you about this morning.

4 **MR. GARDNER:** Got it.

5 **MS. MARZIANI:** Would you like another copy?

6 **MR. GARDNER:** I do need another copy. Thank you.

7 **THE COURT:** So this letter, and I think I can read
8 this portion, is -- it's a memorandum from Kenneth Jackson,
9 Assistant to the Administrator for Management and Resources at
10 USAID. So just starting with that point, and it appears to
11 have kind of a signature for that person, are you saying
12 there's something irregular about the Assistant to the
13 Administrator for Management sending this type of
14 communication? Is that the normal person, and you're just
15 saying it wasn't really that person? Or you're saying that
16 that role is not the right role for this anyways?

17 **MS. MARZIANI:** So through the conversations we've had
18 with witnesses and plaintiffs, it's our understanding that this
19 came from the -- the HR e-mail address that we believe to be
20 illegitimate, that we believe to have been created by DOGE
21 outside of the normal HR channels.

22 **THE COURT:** So different from the one that you would
23 normally hear from HR on?

24 **MS. MARZIANI:** Correct.

25 **THE COURT:** Okay.

1 **MS. MARZIANI:** It's an actual different e-mail
2 address that has been created and is being used.

3 And by the way, I would note that if you look at J. Roe 1,
4 so this is our first sealed witness declaration, I believe my
5 colleagues will get the exhibit number, but this is from the
6 witness who was a high-ranking official at -- or who is a
7 high-ranking official at OPM.

8 And that witness testifies -- thank you. Oh, 55, is the
9 exhibit; 55.

10 And J. Roe 1 testifies to a very similar phenomenon at
11 OPM, that there have been new e-mail addresses created at OPM
12 by DOGE affiliates that purport to come from HR but are, in
13 fact, outside of the normal processes.

14 And, look, Your Honor, I will submit, this is
15 circumstantial evidence what I'm describing. And it is
16 circumstantial evidence that is connected and directly
17 supported by the defendants' own admissions. I mean, the
18 defendants are telling us they are doing this.

19 To go back to the example that my colleague raised, and if
20 you look at the new exhibit in the record, 67, we actually
21 provide a video from the cabinet meeting that happened just a
22 couple of days ago, and Mr. Musk describes the
23 five-things-you-did-this-week e-mail by saying that Mr. -- that
24 President Trump tweeted that he wanted Mr. Musk to get more
25 aggressive.

1 According to Defendant Musk, he then received a call from
2 the President seemingly telling him the same thing.

3 And then Mr. Musk went -- went forth based on, as far as
4 we know, instructions simply to be more aggressive, that he
5 then came up with this idea to send out a
6 five-things-you-did-this-week e-mail to every person in the
7 federal government. And he did it from that OPM e-mail where
8 we have witness testimony to support that it is, in fact,
9 created and controlled by DOGE.

10 **THE COURT:** So I understand the argument, you
11 mentioned there are cases on appointments clause issues.

12 **MS. MARZIANI:** Correct.

13 **THE COURT:** Are there any that involve what is
14 considered significant authority that is internal to the
15 government in terms of telling people within agencies what to
16 do or not to do, as opposed to -- I think the classic examples
17 are special counsel-type people, independent counsels, where
18 they basically have prosecutorial authority or administrative
19 law judges, or the equivalent, where they are basically making
20 judicial decisions in cases.

21 Can you give me an example of something that's closer to
22 this factually, particularly in the sense it's not making
23 decisions on behalf of the government directed at outside
24 parties but that's sort of the internal federal government
25 staff?

1 **MS. MARZIANI:** Your Honor, I would want to go back to
2 see if I could find one.

3 I will say, as you note, the appointments clause case law
4 by and large has a different factual predicate.

5 I would also note, however, that we bring a separations of
6 powers claim, too. And the separation of powers claim is
7 twofold.

8 On the one hand, an appointments clause violation is a
9 separation of powers violation as well.

10 **THE COURT:** Sure.

11 **MS. MARZIANI:** Yes.

12 **THE COURT:** But those probably rise and fall largely
13 together.

14 **MS. MARZIANI:** Of course. Agreed.

15 **THE COURT:** That aspect of it.

16 **MS. MARZIANI:** In addition, the -- we all know from
17 *Youngstown*, and many other Supreme Court cases, that the
18 executive branch cannot execute legislative power that only
19 belongs only to Congress.

20 And here, based on the evidence that we have collected, we
21 think this is happening in three different ways that go to your
22 question.

23 One is, even a properly appointed agency head cannot take
24 actions within their agency that are contrary to law. So, for
25 example, even a properly appointed USAID administrator cannot

1 blanket freeze dedicated appropriations or dismantle their own
2 agency. That would be unlawful and that would be a separation
3 of powers problem.

4 Second, even if a properly appointed agency head could
5 lawfully dismantle their own agency, let's say they had
6 congressional authorization to do so, it's not the case that a
7 different agency head could do that. So just -- for example,
8 the Secretary of Transportation can't use DOT staff to
9 dismantle USAID.

10 And then you get to the scenario that we are confronting
11 here, which is actually a third type of scenario, which is that
12 even if it were the case, that a properly appointed Secretary
13 of Transportation with properly delegated Congressional power
14 could shutter USAID, and we don't think that's the case, but
15 let's assume that's the case. That's not actually what we're
16 looking at here.

17 Here, this is a made-up super agency being run by somebody
18 occupying a made-up position, or perhaps none at all, who is
19 giving the orders to dismantle it.

20 And so I do think that from that frame, this is a
21 significant separation of powers case in addition to
22 appointments clause case.

23 **THE COURT:** So on that point, it sounds like you
24 might be talking about dismantling USAID as one form of the
25 extra constitutional actions. Is that the most specific

1 example you -- or best example you have, or is there one that's
2 better than that from your perspective?

3 **MS. MARZIANI:** I think that is the example that we
4 have the most firsthand evidence to support. And I guess the
5 way I've been thinking about it, is that defendants have been
6 effectively dismantling USAID. Obviously they are bragging
7 about it, as my colleague pointed out.

8 But the way that they're doing it is through the means
9 that we just discussed, they're doing it through controlling
10 back-end infrastructure; they're doing it by making decisions
11 about terminations; they're doing it by making decisions about
12 freezing contracts. But all of that bundles up to effectively
13 paralyzing this independent agency.

14 **THE COURT:** So if -- if I were to agree with you
15 that -- that terminating an agency outside of Congress is --
16 well, actually, on this one, you've given us some sources about
17 the statutory -- the statutes that relate to USAID.

18 As I look at it, it appears as if Congress created -- or
19 there's statutory authority for establishing the agency. You
20 gave us some information from the appropriate -- or a statute
21 in which the Appropriations Committee basically said you need
22 to consult with us if you are going to do certain things,
23 reorganizing, closing certain offices, things that seem to be
24 short of dismantling the entire agency.

25 I didn't see in there any language about abolishing the

1 agency as one of the things that this consultation back and
2 forth goes.

3 So how do you read the significance of the appropriations
4 statute? It seems to me on the one hand, it may support the
5 view that they can't abolish the agency because it's not even
6 listed there, but it may also support the view that they could
7 do some of these steps short of it, with appropriate
8 consultation, and that implies, at least, that the President
9 has some authority to reorganize, to move offices around, thing
10 likes that. They may need to consult with Congress, but it
11 doesn't say they can't eventually do those things. Or do you
12 read it differently?

13 **MS. MARZIANI:** So I do want to be clear, I mean, our
14 case is alleging that there is nobody who has been properly
15 authorized who is making these decisions. And so I agree -- I
16 mean, you know, I -- you could go through some of the decisions
17 that we are pointing to that we allege defendants haven't
18 properly made. Some of those could be made by a properly
19 appointed agency head.

20 But importantly, that evidence is not in front of this
21 Court. I mean, we have very little information from the
22 Department of Justice in their response brief as to, you know,
23 what, if anything, Mr. Rubio has known about, what he directly
24 authorizes.

25 I noted before, the declaration from Mr. Marocco is very,

1 very careful to actually say that he is exercising duties of
2 the Acting Deputy Secretary, but we believe he's not, in fact,
3 the Acting Deputy Secretary.

4 So I would submit that we need to have a lot more
5 information about the internal decision-making at USAID before
6 we could properly answer the Court's question.

7 **THE COURT:** Well, okay. I mean, I think there's some
8 things where, as you said, there's a factual dispute about who
9 decided to do certain things. I think part of your argument
10 seemed to be that -- I think it's in the brief, that even if
11 the President or someone wanted to do these things, they
12 couldn't do it under the Constitution. And so for those types
13 of actions, it doesn't appear as if you really need to know
14 exactly who did it, only whether it was done or not.

15 And so are there things in that category? I mean, are you
16 saying that closing down USAID would be in that category?

17 **MS. MARZIANI:** Yes.

18 **THE COURT:** Are you saying something less than that,
19 like terminating X percentage of the force, workforce, and I
20 don't know what the right percentage is, or terminating X
21 percentage of the contracts would count as something that he
22 can't do? Or are you -- where is the line there between
23 running the agency and doing some reorganization that might be
24 permitted --

25 **MS. MARZIANI:** Absolutely.

1 **THE COURT:** -- versus something that's outside the
2 constitutional power of the President?

3 **MS. MARZIANI:** I think I would ask for discovery and
4 more briefing to get to kind of an exact percentage of where
5 the line is between effectively dismantling and neutralizing an
6 agency, which we think would fall outside the bounds of power,
7 and something that could be the -- the actions that could be
8 taken by a properly appointed agency head.

9 I will also note, though, and, of course, this is being
10 litigated in other forums, that there is a constitutional
11 problem with the executive branch unilaterally freezing funds
12 that have already been appropriated by Congress. So that's
13 kind of a separate category of problematic behavior from a
14 separation of powers point of view.

15 **THE COURT:** Well, you vaguely reference that -- or
16 you briefly reference that in your brief, but I didn't -- are
17 you relying on any particular statutes? I know the
18 constitutional argument isn't -- doesn't overlay exactly on
19 statutory compliance or violations, but it's obviously a factor
20 to consider under *Youngstown*. So are there statutes that get
21 into this question of you can't freeze everything? You're
22 saying that that's your position, but is there anything that
23 shows that, at least from a statutory standpoint?

24 **MS. MARZIANI:** So if Your Honor is very interested in
25 this point, I would ask for permission to brief it further.

1 But I would say that, in general, it's my understanding
2 that the empowerment act has limits on the ability of the
3 executive branch to, you know, unilaterally make decisions
4 about properly appropriated funds.

5 **THE COURT:** I mean, would you agree that at least
6 some termination of contracts or some termination of employees
7 would not be a constitutional violation? It's just some -- you
8 know, it's the magnitude -- I mean, is it -- is it roughly the
9 same as saying whatever you're doing is effectively terminating
10 the agency?

11 **MS. MARZIANI:** So I --

12 **THE COURT:** Whatever amount of contract or employee
13 termination gets you to that practical result? Or is there
14 some other result, short of termination of the agency, that
15 you're saying is still a constitutional violation in terms of
16 just the volume of contract grant or employee terminations?

17 **MS. MARZIANI:** So I think broadly speaking, there
18 are -- this goes to the two different claims.

19 So on the one hand, cases like *Lucia*, the appointments
20 clause cases tell us that if a person is improperly exercising
21 executive authority, that the remedy is to undo those tainted
22 decisions.

23 And so there, if we are able to, you know -- if, like, as
24 we allege, that Mr. Musk is, in fact, the decision-maker and
25 directing DOGE to do this, if we are correct on that, then the

1 proper remedy would be to undo the tainted decision-making.

2 **THE COURT:** It doesn't have to be an extra
3 constitutional one in the sense of what Congress is authorized
4 to do, just that he was the wrong person to do that.

5 **MS. MARZIANI:** Correct, correct.

6 **THE COURT:** So in theory, if you could show that a
7 single termination of one person was a significant act of a
8 significant authority, then that could be undone.

9 **MS. MARZIANI:** Correct.

10 **THE COURT:** So I understand that's different than the
11 other theory, which requires more of a broader impact, I would
12 imagine, to violate the Constitution.

13 **MS. MARZIANI:** That is -- I mean, I think when you
14 get into the second prong, the separation of powers prong, what
15 you are, as Your Honor was very wisely asking about, what
16 you're really talking about is, you know, what Congress has
17 specifically authorized, what Congress has specifically
18 delegated versus powers that the executive is taking that is
19 outside of congressional authorization.

20 **THE COURT:** Okay. So -- but it is correct that part
21 of your argument on the separation of powers is separate from
22 the appointments clause issue in terms of whether it's
23 dismantling the agency or otherwise, that that goes beyond what
24 the President or the executive branch can do?

25 **MS. MARZIANI:** Yes; yes, Your Honor.

1 **THE COURT:** And the one that you seem to have latched
2 onto is dismantling the agency. Again, how that's defined is
3 perhaps the tricky part.

4 **MS. MARZIANI:** Yes.

5 **THE COURT:** Is there any other action you would say
6 that would violate the separation of powers, just separate and
7 apart from who took the action?

8 **MS. MARZIANI:** Yes, I think the other one is the
9 issue that, again, is front and center in the AIDS vaccine
10 case, but is this question of freezing appropriated funds, yes,
11 Your Honor.

12 **THE COURT:** Freezing.

13 And is it your view, as I said with employees or
14 contracts, it's not just freezing one particular payment, but
15 it's the way it was done here in terms of how broad based it
16 was? Or are you saying it's not even necessarily that?

17 **MS. MARZIANI:** You're correct, Your Honor.

18 I mean, look, we, of course, would take the position that
19 a properly appointed agency head can, you know, authorize a
20 reduction in force, right? Those processes exist.

21 So, yes, there's no separation of powers concern there if
22 somebody is properly authorized to do so. And you're correct,
23 that the separation of powers problem starts to creep in where
24 the magnitude of those decisions is effectively dismantling an
25 agency that's been created by Congress.

1 **THE COURT:** Okay. In terms of any guidance that you
2 would ask me to rely upon on the separation of powers issue,
3 seems as if what you've given me are the appropriation statute,
4 the foreign affairs statute, *Youngstown*. Is there anything
5 else that you would suggest I focus on in trying to determine
6 whether there's a likelihood of success on that claim?

7 **MS. MARZIANI:** We did our best -- given your interest
8 at the status conference, we did our best to put that
9 information in the reply brief.

10 **THE COURT:** Okay. Okay.

11 **MS. MARZIANI:** Your Honor, would you like to hear
12 from my colleague on the issue of irreparable --

13 **THE COURT:** Yes, is there anything else you want to
14 raise on the merits before we go to that?

15 **MS. MARZIANI:** Nothing else, Your Honor.

16 **THE COURT:** Okay. Thank you.

17 **MS. MARZIANI:** Thank you very much.

18 **THE COURT:** So, Ms. Stevens, perhaps you could start
19 by updating, if there is anything to update on, in terms of the
20 status of the plaintiffs relative to, you know, whatever was
21 submitted previously by them in terms of their individual
22 status.

23 I recall there was at least some discussion at the
24 conference about how the Justice Department was going to work
25 within the government to try to see if some of the problems

1 that you had identified that were causing injury could be
2 addressed in the short term? And I don't know if any of that
3 has happened or not, so maybe you can start with that.

4 **MS. STEVENS:** Absolutely, Your Honor.

5 We did engage in that conversation with the Department of
6 Justice in an effort to negotiate a good-faith interim order.
7 We were unable to come to an agreement.

8 Where we left it is -- well, there are a couple of parts
9 of the relief that we would need the Department of Justice to
10 consider including providing access back to our clients. And
11 unfortunately, we were not --

12 **THE COURT:** Access to the computer systems?

13 **MS. STEVENS:** To USAID systems generally including
14 the safety and security systems.

15 And so where we left it is, we, and our clients, are
16 deeply uncomfortable with the notion that a DOGE person would
17 be responsible for providing that access back. And so we
18 needed guarantee that they would not be the ones to see our
19 clients' information.

20 We couldn't -- we were not provided with that assurance by
21 the Department of Justice, and so it sort of stalled there.

22 **THE COURT:** So the current status, then, is -- and
23 remind me if there's more than one category in terms of -- I
24 believe, you know, you have employees and contractors, you have
25 people who are on administrative leave, I think some who may

1 have been officially terminated, just so -- there may be
2 different answers for different people.

3 But in terms of the most significant issue now in terms of
4 irreparable harm, and maybe also on the issue of standing, what
5 is the most compelling example of someone who is facing
6 irreparable harm and what are their current circumstances?

7 **MS. STEVENS:** So the first sort of category of
8 irreparable harm is the -- well, first of all, Your Honor, I'm
9 going to try to refer to plaintiffs as "he" or "they" to try to
10 keep the anonymity.

11 **THE COURT:** Okay.

12 **MS. STEVENS:** But the first category of irreparable
13 harm is their physical peril and their psychological harm. And
14 this is very tied to our three plaintiffs who are overseas,
15 again, at the direction of the United States government.

16 And to update Your Honor, J. Doe 9 has two declarations
17 before the Court. They, for over two weeks, had no access to
18 USAID systems, including the safety and security apparatus.
19 They have been given, in the last three or four days, access
20 back to those systems.

21 They are still quite worried because of the chaotic and,
22 you know, unclear nature of toggling on and off access to these
23 systems done by defendants DOGE, at the direction of Mr. Musk.
24 But they have the psychological harm that goes along with
25 having lost the access for over two weeks and not knowing if

1 that will happen again. And they are in a high-risk area of
2 the world.

3 And then we have a new --

4 **THE COURT:** Is that high-risk issue something that --
5 I know you're trying to preserve anonymity. Is that -- I mean
6 I guess, first of all, is there a way for me to know where that
7 is? And, also, does the government know, at least the
8 attorneys, so -- to understand so they can fairly argue how --
9 how great a harm this is at this point?

10 **MS. STEVENS:** We have identified the area of the
11 world as the Middle East. We have not pinpointed further than
12 that.

13 **THE COURT:** Okay.

14 **MS. STEVENS:** For anonymity reasons.

15 **THE COURT:** Sure.

16 So -- but you're saying they now have access to the
17 systems, they are concerned it might not stick. Do you know
18 whether that was provided because as an accommodation in this
19 case? Or was it something else?

20 I think that there were -- at least according to the
21 Marocco declaration, they weren't trying to cut people off.
22 Whether you agree with that or not, they seemed to imply that
23 they would put people back on if it was appropriate. Or is
24 it -- I know there was some rulings in other cases in which
25 some of these things, at least arguably, might happen.

1 So do you know what caused that to happen?

2 **MS. STEVENS:** We don't know what caused it to happen,
3 Your Honor. It was very -- it was within a week of filing the
4 motion in this case. It was also, as you note, on the heels of
5 the temporary restraining order by Judge Nichols, and the
6 temporary restraining order in the AIDS vaccine case, both of
7 which arguably reached to personal services contractors, which
8 J. Doe 9 is.

9 But there's not been any shedding of light on the reasons
10 by the DOJ on that.

11 Our other client -- may I move on to the other client,
12 Your Honor?

13 **THE COURT:** Beside -- so let me just understand the
14 J. Doe 9 issue here.

15 So part of the issue is not having access to the systems,
16 in particular, to contact security personnel if there was a
17 need to, you're saying that may now be available.

18 What is the -- I mean, remind me again, is this individual
19 on leave? Is there -- is the person either required to come
20 back to the United States, wants to, doesn't want to, is
21 waiting to see because there might be restatement? What is
22 sort of the apparent future here?

23 **MS. STEVENS:** I'll be careful with my phrasing here,
24 Your Honor, to maintain anonymity.

25 **THE COURT:** Sure.

1 **MS. STEVENS:** They are a personal services contractor
2 overseas not on administrative leave or otherwise locked out of
3 their systems currently. They are --

4 **THE COURT:** But the lockout before was because they
5 were in one of those statuses or because just everyone lost it
6 for some reason?

7 **MS. STEVENS:** Well, I mean that is part of the chaos
8 of the defendants' implementation here.

9 **THE COURT:** I see, okay.

10 **MS. STEVENS:** Is they lost systems access on
11 February 3rd, along with a whole host of other USAID employees
12 and personal services contractors. And, again, were without
13 that for over two weeks.

14 **THE COURT:** I understand. Okay.

15 **MS. STEVENS:** I think you had a question about --

16 **THE COURT:** Okay. Well, just -- okay. So other than
17 the systems access, is there another aspect to the harm to that
18 individual?

19 **MS. STEVENS:** The psychological harm of this access
20 may be lost at any moment, based on defendants' past conduct.

21 **THE COURT:** Okay. You were going to give another
22 example.

23 **MS. STEVENS:** Yes, Your Honor. J. Doe 22, this is a
24 new declaration that we attached to the reply, they are in
25 Central America in a high-risk area. They have identified

1 that --

2 **THE COURT:** Do you have an exhibit number for this
3 one?

4 **MS. STEVENS:** Yes, Your Honor. One moment. It is
5 Exhibit 34.

6 **THE COURT:** Okay.

7 **MS. STEVENS:** They have identified that the
8 defendants -- let me back up a little bit.

9 My colleagues went through the access that defendants from
10 DOGE have and USAID systems. You have in front of you several
11 declarations that are -- pinpoint what that access is a little
12 more specifically than God mode or system levels access. It
13 really details in J. Roe 3, which is under seal -- J. Roe 3's
14 declaration details exactly which systems DOGE has access to
15 within USAID, and it includes the Phoenix application or the
16 Phoenix system, which is how USAID pays its bills. And that is
17 across the paying-bills spectrum. So it includes paying
18 partners and paying -- like downstream folks. But it also
19 includes paying for electricity and other services for United
20 States workers who are overseas.

21 So it includes J. Doe 22's access to electricity and
22 access to their phone -- cell phone. And they testify in their
23 declaration that that system has been cut off by defendants and
24 remains off.

25 And what that means, how you tie that to the irreparable

1 harm is that, again, they are in a high-risk area, and if they
2 lose access to their electricity, they lose access to the radio
3 function and the -- the security cameras that they have at
4 their home.

5 And then, if they lose access to their cell phones, they
6 lose access to the ability to contact security personnel.

7 And so this is a real substantive danger.

8 **THE COURT:** Okay. So I understand that. You're
9 saying that those bills are not getting paid right now.

10 Do you know -- just in looking at the declaration, it's
11 not clear from this, and maybe they don't know specifically,
12 but, like, I mean, we all know if you don't pay, it gets cut
13 off at some point.

14 But is there a schedule for that? Do we have any idea how
15 much time there is before that happens?

16 **MR. EISEN:** They expected it to be soon based on
17 conversations with their mission head.

18 And I think they note in their declaration that there's
19 been some leeway given by the electricity company and the cell
20 phone company, because they asked for an extension, because the
21 systems are literally cut off, and they have gotten a short
22 extension.

23 **THE COURT:** Meaning the declarant asked for it or the
24 State Department personnel at the mission or some --

25 **MS. STEVENS:** The mission. The mission, is our

1 understanding.

2 **THE COURT:** Okay.

3 **MS. STEVENS:** But you will note, Your Honor, at the
4 end of that declaration, that the State Department personnel on
5 location, or in country, are hesitant to pay those invoices on
6 behalf of USAID because they fear not being able to get
7 reimbursed.

8 So this is not a situation that is tenable for long.

9 **THE COURT:** You're saying that the State Department
10 personnel are concerned that State Department won't get
11 reimbursed because there may be something improper about making
12 these payments, or at least they don't know?

13 **MS. STEVENS:** Well, I don't think we've speculated
14 that far, but the Phoenix system is not on to do the
15 reimbursement. So it's just -- the point is, the mission is
16 seeking access to money to be able to pay for these very
17 important systems.

18 **THE COURT:** I understand.

19 **MS. STEVENS:** And is not able to get it.

20 **THE COURT:** And this person is on leave, right?
21 Administrative leave involuntarily; is that correct?

22 **MS. STEVENS:** They have been put on administrative
23 leave, yes, sir.

24 **THE COURT:** So they are not necessarily supposed to
25 come back to the United States yet? They are supposed to wait

1 and see what happens?

2 **MS. STEVENS:** That's my understanding, Your Honor.

3 **THE COURT:** Okay. Okay. Understood.

4 So besides those two examples, are there any others that
5 are either -- I mean, again, in your view compelling examples
6 of irreparable harm that's ongoing at this point?

7 **MS. STEVENS:** Your Honor, I just want to note that
8 J. Doe 19 did provide a declaration in this. They are also
9 overseas. As of the last time we spoke with them, they still
10 were without access to USAID systems generally.

11 They -- they, because of where they are located, don't
12 rely on the Scry app, which J. Doe 9 does rely on. And so
13 while it is not quite the same step as J. Doe 9 and J. Doe 22,
14 J. Doe 19 is still fully without access to USAID systems, and
15 they are overseas.

16 **THE COURT:** What exhibit number is that?

17 **MS. STEVENS:** 8, Your Honor.

18 **THE COURT:** Okay. Okay.

19 I mean, are you -- which of these prongs of harm do you
20 think is the most significant, from your perspective, that
21 you've identified three or four, at least, theories under which
22 there's irreparable harm?

23 **MS. STEVENS:** Well, Your Honor, certainly the
24 physical and psychological harms that we just went through with
25 respect to the folks that are overseas.

1 But then turning right next to the access by defendants,
2 access and control of all of our plaintiffs' sensitive data
3 that is housed in the USAID systems.

4 And Ms. Marziani and Mr. Eisen went over a little bit what
5 that access and control looks like with respect to -- like,
6 currently, Mr. Kliger and Mr. Farritor's full access to these
7 systems, and the manipulation of those systems in the last five
8 days.

9 And so I would point to, Your Honor, there are three sort
10 of subparts under the access and control that are important to
11 point out to the Court.

12 One is the continued unauthorized control of the systems
13 by itself we think is sufficient to demonstrate irreparable
14 harm. We have a very recent case out of this district granting
15 a temporary restraining order in the AFT matter that where
16 that -- the Court went through and highlighted the nature of
17 the information in that situation DOGE would have access to,
18 including plaintiffs' full name, plaintiffs' address, Social
19 Security numbers, other private information and personally
20 identifiable information. And the Court really analyzed all
21 that can be found out about a person when you have that type of
22 access.

23 And here, it is even broader than that, or more intense
24 than that, because many of our plaintiffs have security
25 clearances where you essentially lay bare your entire life in

1 order to get a security clearance. Those files are in these
2 systems that defendants have access to.

3 And we know this is another -- the next part -- so the
4 access itself is sufficient, and then the defendants have
5 demonstrated their willingness to misuse this access. And
6 that's in two parts.

7 One is that we know that DOGE members have obtained
8 systems level access and then given themselves the ability to
9 go into secure areas within USAID buildings. They did this
10 that first weekend when they took control of USAID systems. So
11 that's one.

12 And then the other is highlighting on DOGE's website,
13 under their savings page, personal information of fired
14 personal services contractors.

15 And there's two key pieces of evidence to point Your Honor
16 to. One is J. Doe 20, who you have a declaration from, Your
17 Honor, which is at Exhibit 32, J. Doe 20 is featured -- is
18 included on the savings page of the DOGE website. Some of
19 their personal information is included.

20 **THE COURT:** Can I -- I actually had this question. I
21 mean, when I look at Exhibit 20, I can't really tell what it
22 is. So what is it about this screenshot that establishes that
23 the personal information of J. Doe 20 is now publicly
24 available?

25 **MS. STEVENS:** Your Honor, I'm going to step to the

1 back and grab Number 20.

2 **THE COURT:** Okay.

3 **MS. STEVENS:** Okay. Apologies, Your Honor. I
4 thought I knew the exhibit you were talking about, but I wanted
5 to verify.

6 So Exhibit 20 is the main page, is a screenshot of the
7 main page that individuals see when they access the DOGE
8 website and go to the savings page.

9 Embedded sort of down the page is a running list of
10 contracts canceled by DOGE. It's not just USAID systems, it's
11 sort of all of the agencies that they've gone into and been
12 canceling.

13 But, of course, the USAID-canceled contracts were first,
14 or part of the first tranche uploaded onto this site, and they
15 include some personal services contractors' cancellation, and
16 if you --

17 **THE COURT:** I'm just looking at the document. I'm
18 not seeing that here.

19 So are you just telling me that -- you just wanted to give
20 me, like, a higher-level page, but I actually can't see the
21 part about the personal services contractor, or --

22 **MS. STEVENS:** We have an additional exhibit, Your
23 Honor, which is -- this was attached to our reply brief, Your
24 Honor. Exhibit 40.

25 **THE COURT:** Okay. And I did see this, but is this

1 the same system but a more granular file? Or is it a different
2 system than Exhibit 20?

3 **MS. STEVENS:** It's the same system, a more granular
4 file. You -- a user is interacting with the website, you click
5 on one of the listed contracts, and what is opened is the -- is
6 what you see in Exhibit 40.

7 **THE COURT:** So this is information about a particular
8 contract that was terminated for convenience, and you're saying
9 it's basically a personal services contract for an individual
10 person, therefore, their name is in this redacted portion? And
11 their address?

12 **MS. STEVENS:** That's correct, Your Honor.

13 And if Your Honor looks at the second page of the exhibit,
14 at the bottom right, it has the street address, city, state,
15 ZIP.

16 And then on the next page, it has the phone number.

17 **THE COURT:** I'm sorry, is it redacted, or it's
18 just --

19 **MS. STEVENS:** It is redacted, Your Honor.

20 But it says "phone" off to the left. This is at JR545.

21 **THE COURT:** 545, huh? Oh, at the top. Okay.

22 Okay. I understand.

23 But this is not one of your plaintiffs, right? This was
24 the one that is an example of something that they are in that
25 system?

1 **MS. STEVENS:** That's correct, Your Honor.

2 **THE COURT:** And is there a contract in the same
3 category in the sense of -- is J. -- J. Doe 20's contract
4 comparable to this one in terms of what type of contract it is?

5 **MS. STEVENS:** It is, Your Honor. They had previously
6 interacted with their contracting personnel before DOGE and
7 Defendant Musk came into the picture.

8 **THE COURT:** Uh-huh.

9 **MS. STEVENS:** And had their information suppressed
10 from what DOGE is pulling from now.

11 **THE COURT:** Okay.

12 **MS. STEVENS:** And -- sorry.

13 **THE COURT:** No, go ahead.

14 **MS. STEVENS:** Our understanding, with respect to our
15 other personal service contractors clients, is most of them
16 have not been able to negotiate a similar suppression of their
17 information in part because this whole thing has been so
18 chaotic and there's not been the ability to talk to anyone
19 about this.

20 **THE COURT:** Wait. So J. Doe 20 has been able to, at
21 least for now, not have their personal information on that
22 page?

23 **MS. STEVENS:** There's some of their personal
24 information, not to the level of detail as Exhibit 40. But
25 that -- they negotiated that situation prior to the defendants

1 coming into the picture.

2 **THE COURT:** I see. I see.

3 Let me ask you this. Let's assume that you've established
4 that there is at least some imminent harm that would be very
5 problematic, possibly irreparable, to your clients. If -- one
6 remedy would be, look, don't put stuff on the website, don't --
7 you know give them access to -- you know, pay their bills, all
8 of those these things that immediately address the issue that
9 you've just identified, obviously you want that relief. But
10 you seem to want more than that.

11 And so how does one justify any additional broader scope
12 relief when the harm arguably couldn't be addressed to those
13 individuals by doing those things?

14 **MS. STEVENS:** Well, Your Honor, we don't think that
15 you can -- that the defendants could un- -- untie the access to
16 our clients' data from the access, period. The most
17 appropriate thing to do is have them put, in their words,
18 pencils down, get out of these systems, do not have access to
19 our clients' data or any USAID data; do not have access such
20 that they can abuse that access, like the example of going into
21 secured systems; and the inability to post our clients'
22 information on this DOGE website.

23 **THE COURT:** Okay. I guess what I'm saying is, how do
24 you get from being concerned about these individual issues and
25 perhaps addressing those issues to basically undoing all the

1 terminations, all the contract terminations, employee
2 terminations, reversing the removal of the USAID sign outside
3 their office?

4 I mean, I don't know if you're asking for all of those
5 individual things, but it does seem like you're asking for
6 something more broad than just putting these plaintiffs back to
7 a stable status quo. And if so, how do you legally get the,
8 you know, leap from one to the other?

9 **MS. STEVENS:** Your Honor, at least with respect to
10 the data access itself, there -- we know of no way that Your
11 Honor could direct DOGE to not have access to our plaintiffs'
12 data within these -- across these USAID systems and still allow
13 the access to other peoples'. So that's -- data access is
14 certainly intertwined.

15 With respect to the contracts that DOGE has been canceling
16 or not paying the -- not allowing payment of the invoices for,
17 it is our position that DOGE's unilateral decision-making is
18 ongoing. We have the evidence of Mr. Kliger creating his own
19 user name.

20 This is really highlighted in our J. Doe 2 second
21 declaration. That person explains and actually has a
22 screenshot of Mr. Kliger using his systems access to make a
23 user account that then shortly, I think, 24 to 48 hours later,
24 is used to send out the RIFs that Ms. Marziani talked about.

25 It was also used to send out the e-mail firing the

1 probationary employee which is highlighted in the J. Roe 5
2 declaration. This is also under seal.

3 **THE COURT:** Yeah. I'm just trying to understand what
4 are you asking for as your relief? Because, again, it seems to
5 make sense you want to address these individual issues from the
6 plaintiffs, but for something like that, are you saying, well,
7 don't let the DOGE people access the computers even though
8 someone from USAID, in theory, could just do exact the same
9 action?

10 Or are you trying to say they can't fire people, they
11 can't RIF people, they can't terminate contracts? What are you
12 asking for, and then how do you justify it under the -- at
13 least in terms of the connection to any potential irreparable
14 harm here.

15 **MS. STEVENS:** Your Honor, at minimum, and I'm looking
16 at our prayer for relief in the motion -- excuse me, in the
17 memorandum, at minimum, we're asking for them to stop accessing
18 the data, stop distributing it, stop sharing it or otherwise
19 disclosing the data. We think that necessarily means they need
20 to be out of the data, period.

21 **THE COURT:** Uh-huh.

22 **MS. STEVENS:** And to address Your Honor's question of
23 how -- where does this go, what layers, that's the minimum --

24 **THE COURT:** Okay.

25 **MS. STEVENS:** -- that we think is required.

1 With respect to the reinstatement of e-mail, payments,
2 security notification, and other systems, at minimum, our
3 clients need access to the systems to which they are currently
4 entitled.

5 **THE COURT:** And that's --

6 **MS. STEVENS:** And then we -- sorry.

7 **THE COURT:** That's assuming -- are you talking
8 about -- I think you have some plaintiffs here who have already
9 been terminated, correct?

10 **MS. STEVENS:** We do have some that have already
11 been -- well --

12 **THE COURT:** What would it mean for them to have
13 access to things they are entitled to, things that they would
14 have been if they hadn't been terminated, or things that they
15 presently should be getting to but they can't?

16 **MS. STEVENS:** For the -- I want to distinguish
17 between personal services contractors who have gotten the
18 letter letting them know that they have a two-week notice, and
19 then we have other clients who are direct-hire employees who
20 have gotten notification that they are on administrative leave.

21 **THE COURT:** Uh-huh.

22 **MS. STEVENS:** And so -- but those folks that are on
23 administrative leave have been -- shortly after they were put
24 on administrative leave and told that they would still have
25 systems access by that e-mail --

1 **THE COURT:** They have been cut off.

2 **MS. STEVENS:** Correct.

3 And then for the personal services contractors, until that
4 two weeks is up, they should have also have access but they
5 don't. They got a letter saying they are getting cut off -- or
6 excuse me, they got a letter saying they were getting
7 terminated, and then they got cut off.

8 There's a pattern here of cutting everyone, but including
9 our plaintiffs, out of these systems that they are otherwise
10 should be allowed to be in.

11 **THE COURT:** Okay. And then is there any other,
12 again, broader relief than dealing with the individual
13 situations, and if so, is there justification for that? Or are
14 you just -- that's all you're asking for?

15 **MS. STEVENS:** No, Your Honor, the broader relief we
16 think, at a minimum, is DOGE out of these USAID systems.

17 **THE COURT:** Okay. So in terms of -- you're not
18 asking for anything to be done, at least at the preliminary
19 stage, on terminations of people, contract terminations, other
20 aspects of terminating the agency, you're not asking for
21 anything right now on those things?

22 **MS. STEVENS:** Your Honor, we think the -- we think
23 the appropriate thing to do would be to get the at-minimum
24 relief that I just articulated, and then engage in expedited
25 discovery to bring back to the Court the next -- to the extent

1 that it is appropriate, the next set of relief that would be
2 required by that discovery process.

3 **THE COURT:** But -- so let me ask you that. I
4 mentioned to your colleague, Ms. Marziani, this issue of
5 discovery, and she says you need some. I -- I agree that
6 there's an incomplete record, so more information would help on
7 the facts.

8 Are you suggesting that if you could get -- with or
9 without an injunction here, if you get an injunction, and it
10 puts your -- the plaintiffs back to a reasonable position, you
11 would be comfortable with that.

12 And then are you saying that you would want to have yet
13 another motion, or you want to have part of the motion held in
14 abeyance while you do discovery? Or are you saying, well, at
15 that point we would be sort of in the regular case with
16 discovery -- perhaps moving faster than typical, but we would
17 be in a regular mode at that point?

18 **MS. STEVENS:** I think, Your Honor -- I think, Your
19 Honor, it depends on the relief fashioned by the Court and the
20 discovery allowed.

21 So to Your Honor's point about contracts and PSC
22 terminations, we think the evidence is strong, stronger than
23 just merely circumstantial, that DOGE is taking unilateral
24 action to cancel contracts including our personal services
25 contractors, taking unilateral action to put our employee

1 clients on RIFs, on terminating outright.

2 And so if we're allowed to engage in limited expedited
3 discovery on that, we think that might be pertinent to bring
4 back to the Court and ask, but it is hard to say at this point
5 for sure what that might look like.

6 **THE COURT:** Well, it just seems as if it's hard to
7 have multiple rounds of preliminary injunctions. It seems
8 like -- I know there's no formal rule on it, but in an ideal
9 world, you would get one crack at that, and then we would be in
10 the regular case. And, again, I could see a scenario where
11 this case maybe should move faster than some others.

12 But -- so that's why I was asking whether -- it seems to
13 me if you want some kind of preliminary relief that requires
14 discovery, then perhaps the answer is to delay a ruling on that
15 until after there is some expedited discovery, or we could just
16 see where we are now based on the current record.

17 And, then, again if there's -- if it's really a factual
18 distinction -- a factual dispute that requires the discovery,
19 we could do that on the regular process.

20 But it seems strange, at least to me, to say, well, we'll
21 do preliminary relief in part, and then we'll do another motion
22 on this later. And we probably will never get out of the loop
23 of motions for preliminary injunctions.

24 **MS. STEVENS:** That's reasonable, Your Honor. I -- we
25 agree with you. We think there is absolutely sufficient record

1 before the Court right now to award the relief that I've
2 highlighted a few times, number one, in our -- in our prayer.

3 And if the Court will allow an expedited discovery process
4 and maybe move the case faster, I think we agree that that
5 would be the appropriate thing to do next.

6 **THE COURT:** Okay. I think I understand.

7 Anything else that you wanted to offer?

8 **MS. STEVENS:** Your Honor, I would just point the
9 Court to our -- to our -- both the memorandum and the reply
10 with respect to some of the other harms included in the
11 constitutional harms at issue.

12 **THE COURT:** Okay. Thank you.

13 **MS. STEVENS:** Thank you.

14 **THE COURT:** Mr. Gardner, I know you've been waiting
15 patiently.

16 **MR. GARDNER:** Whenever you're ready, Your Honor.

17 **THE COURT:** Yes, go ahead.

18 **MR. GARDNER:** May it please the Court.

19 Plaintiffs seek the extraordinary remedy of a preliminary
20 injunction and claim that Elon Musk and the Department of
21 Government Efficiency's role in the administration has
22 irreparably harmed them based, as they admitted, largely on
23 circumstantial evidence.

24 But as we explained in our filings and supporting
25 declarations, plaintiffs cannot meet any of the four factors

1 necessary to show entitlement to preliminary relief.

2 I would like to start, Your Honor, with something that I
3 did not hear my counsels address either in their briefing or
4 today at the lectern, and that is standing, which is something
5 we squarely addressed in our opposition.

6 **THE COURT:** I think you always do in these cases, so
7 I -- I read that with interest.

8 Well, let me ask you on standing, I mean, is there -- it
9 seemed to me that -- I mean, you made an argument that some of
10 this intrusion into personal data might not be an injury, but I
11 didn't see anything in your brief saying that some of these
12 issues specific to the plaintiffs, whether it's -- I mean, they
13 had someone who hadn't gotten their travel reimbursements back
14 yet. They had someone, as we heard now, who aren't getting
15 payments for certain things that otherwise would get paid for
16 at their foreign residences and things likes that. I haven't
17 heard you say those are not injuries. It seems like your
18 argument was more on redressability or something like that.
19 But you weren't saying those were not injuries; is that
20 accurate?

21 **MR. GARDNER:** That is correct, Your Honor. Some
22 things we contend are not injuries, so the access issues.

23 The other aspects of the claims we contend are either are
24 not caused or traceable to the defendants and/or are not
25 redressable by a court order.

1 So maybe I can start with the access issues. And let me
2 see if I can clear something up right now. And I want to put
3 on the ELMO -- here we go.

4 This is what plaintiffs have represented is Exhibit 40.
5 And this is the DOGE website.

6 And I want to draw the Court's attention to what I've
7 highlighted here on the top, which is FPDSNG.

8 As we note in our brief, and I not hear plaintiffs refute
9 this, this is referencing the publically available Federal
10 Procurement Data System website.

11 All the DOGE website does is link to this publicly
12 available website, and this contract information, including the
13 details, are on that publicly available website.

14 It is not clear to the government how plaintiffs are
15 injured --

16 **THE COURT:** Do you know whether all the PII is
17 unredacted on the public website that predated this DOGE link?

18 **MR. GARDNER:** I did not go through every single
19 contract, Your Honor, so I would never represent that.

20 But I will represent to you, as an officer of the court, I
21 did some spot checking on random USAID contracts, and the
22 contracts that I saw in the FPDS did not contain redactions for
23 things like addresses and the like.

24 **THE COURT:** So including, for example, Exhibit 40?

25 **MR. GARDNER:** That's right. So I did not look at

1 Exhibit 40, in particular, that contract. But if you go onto
2 the --

3 **THE COURT:** Well, it seemed to me that's where I
4 would have gone first. So is there a reason why you didn't
5 look at that one?

6 **MR. GARDNER:** Yeah, because I just went onto the
7 website and chose, I think, five USAID contracts that were on
8 there and spot checked them to see if they contained
9 redactions, and I not see redactions on those.

10 But I am happy, Your Honor, as an officer of the court, to
11 go back and look at this particular one to see if it's
12 identical to both. I just --

13 **THE COURT:** Okay. I understand the point.

14 Nevertheless, I mean, you don't think it's a reasonable
15 concern, given all the social media discussions regarding even
16 just this case and things regarding this case, that there's no
17 potential risk of harm to someone whose information is out
18 there not just as a contractor, but as someone who, you know,
19 is currently in this situation, either not -- whether they are
20 in this case or even just not being in this case, but in this
21 category of someone who is either terminated, on leave, what
22 have you, isn't this a different place than we were two years
23 ago when this website might have been unknown to anybody, or of
24 no interest to anybody?

25 **MR. GARDNER:** Your Honor -- I did not mean to

1 interrupt you.

2 What I was going to say is, look, under *Clapper*, any risk
3 of harm based upon the republication of publicly available
4 information is inherently speculative. Plaintiffs have, I
5 think, more than a dozen declarations. None of those
6 declarations indicate that they are actually being harmed by
7 this publicly available information being on another website.
8 And I think that's telling, because they are not being
9 currently harmed and they have not identified any imminent harm
10 or future harm that's imminent.

11 **THE COURT:** So do the DOGE individuals have access to
12 security clearance, you know, SF86 background information? I
13 mean, again, whether they have accessed it or not, I don't
14 know, but do they have access if they want to get to it?

15 **MR. GARDNER:** I have seen news reportings suggesting
16 that, Your Honor, but I don't have any personal knowledge.

17 **THE COURT:** And why is it necessary?

18 **MR. GARDNER:** I don't have any personal knowledge.

19 **THE COURT:** Why is it even legal? Do they have their
20 security clearances? Do they have their own SF86s?

21 **MR. GARDNER:** Here's what I do know. Here's what I
22 can tell you, Your Honor, that I do know. The two people they
23 have identified as being affiliated with the DOGE, that's
24 Luke -- I believe the last name is pronounced Farritor,
25 Farritor, as well as Gavin Kliger, are detailed employees to

1 the USAID. So they --

2 **THE COURT:** From where?

3 **MR. GARDNER:** From other government agencies.

4 **THE COURT:** Which agencies?

5 **MR. GARDNER:** I don't know off the top of my head,
6 Your Honor. I can get you that information.

7 **THE COURT:** Well, that is kind of important. I mean,
8 are you saying that they are from a certain agency where
9 everyone has a clearance, or are they from somewhere else?

10 I mean, my impression was -- are you saying that they
11 worked for the government before January 20th, 2025?

12 **MR. GARDNER:** I can't say they worked for the
13 government before January 20th, 2025, but I do know that they
14 were specifically detailed from other agencies --

15 **THE COURT:** Why is that helpful, then, as a fact?
16 Because, I mean, first of all, my understanding is they could
17 be a staff of DOGE, but a lot of times with these White House
18 offices, they -- for HR purposes, they have an agency. But
19 when you're detailed, you are still taking orders from whoever
20 you are taking orders from. So why is that relevant?

21 **MR. GARDNER:** Well, it's relevant for the exact
22 reason you said, that when those people on the DOGE team are
23 detailed over to USAID, they are taking orders from USAID
24 employees. And I think that's exactly what the declaration we
25 provided from the person performing the responsibilities of the

1 acting deputy director shows.

2 **THE COURT:** So why is it that we get a declaration
3 and there's really no documentation of anything in there?

4 I mean, again, it would be very easy to provide even just
5 the name of the agency where these individual work --
6 individuals work. But you're saying, you know, you don't know.
7 So somehow no one knows where they are from, but you know they
8 are from another agency.

9 And then, you know, Mr. Marocco says every decision was
10 approved by the Secretary.

11 I've got no documentation, either a letter, an e-mail or
12 anything showing that the Secretary approved anything.

13 **MR. GARDNER:** Right. So a few points, Your Honor.

14 One, and this is not to garner sympathy, but I think this
15 is important just that everyone understands the context here,
16 since January 20th, we have received, I think, approximately 80
17 lawsuits. And our staff at the federal programs branch has
18 been cut in half. We have about half the number of staff that
19 we had in the beginning of November.

20 And we are working on very expedited schedules on all of
21 these cases, including yours. And I just say that to you --

22 **THE COURT:** Well, Mr. Marocco could have provided you
23 more. It wouldn't have taken any extra work on your part to
24 say give me the documentation. I mean, when -- you know, let
25 me ask you this question:

1 There was a RIF -- I mean, these termination -- the freeze
2 orders on contracts, the terminations of employees, placing
3 them on administrative leave, if it really was a decision by
4 USAID, there should be either a piece of paper or at least an
5 electronic message from the Secretary, from Secretary Rubio
6 himself, saying "I'm approving this," or Mr. Marocco to the
7 extent that he had the authority.

8 Mr. Marocco would have had access to anything he signed.

9 So why do we not have any of that?

10 **MR. GARDNER:** Well, again, I was trying to get to
11 that, Your Honor, and I'm trying to be obsequious. We are
12 doing the best we can to get as much information as short a
13 period of time as possible. And honestly, Your Honor --

14 **THE COURT:** So you're saying the Justice Department
15 isn't taking this case seriously, they are not staffing it
16 sufficiently?

17 **MR. GARDNER:** Quite the opposite. We -- Your Honor,
18 I've not had a day off work since January 20th, and none of my
19 colleagues have either. We are working day and night to
20 support -- so we're taking this seriously.

21 **THE COURT:** I understand. I understand. I mean,
22 again, you know, you're cutting people all across the
23 government. So if you're saying you don't have enough people,
24 maybe that's part of the problem.

25 **MR. GARDNER:** I'm not trying to disagree with that,

1 Your Honor.

2 **THE COURT:** I mean, and if USAID can't respond to
3 lawsuits, then maybe they need more people.

4 **MR. GARDNER:** All I can tell you, Your Honor, is I'm
5 trying to be as transparent and forthcoming as possible, giving
6 you as much information as I can under, you know, a very
7 truncated schedule. And, look, if there's more --

8 **THE COURT:** Could you provide any of these things on
9 a truncated schedule now that you know they might be relevant?

10 **MR. GARDNER:** I can certainly go back.

11 But I will say this, Your Honor. Even if there's
12 additional information out there, I do think the record, as it
13 currently exists, is certainly clear enough to resolve the
14 legal question.

15 **THE COURT:** It could be. But, I mean, in the
16 conference you gave the very strong impression that the United
17 States government would provide some additional information in
18 the way of informal discovery to help get everyone on the same
19 page on these issues. And it sounds like the government didn't
20 provide anything.

21 And so, yes, at this point, you have a declaration, and
22 they have circumstantial evidence, but they did ask for more
23 and there was time to get more.

24 Again, it wouldn't be that hard for Mr. Marocco to have
25 given the backup for all the decisions he approved, if he

1 approved any of them. And the fact that we don't have that is
2 questioning -- I mean, it creates question.

3 So, you know, why couldn't that be obtained or why
4 couldn't that be obtained in the next few days? I mean, it
5 seems as if, you know, your side has set the playing field in a
6 way that it's tilted, and it can't be undone -- or it could be
7 undone, if you are willing to allow it to be.

8 **MR. GARDNER:** Well, I mean, look, I guess what I
9 would say to that, Your Honor, is plaintiffs have a burden of
10 proof to show that they need a preliminary injunction now. We
11 do not think they've met that burden.

12 The next step would seem to us to be to deny the motion
13 for preliminary injunction, engage in motions practice, and
14 then ultimately, if the Court concludes the case should go
15 forward, to --

16 **THE COURT:** It seems to me on this case, I mean, the
17 way I look at it, if we do -- and I'm not saying I will, but if
18 I end up addressing the merits on this motion, that's basically
19 the motion to dismiss. We're not going to do this twice.

20 You know, if I find a likelihood of success, implicitly
21 I've found that there's no basis to dismiss. And if I don't, I
22 think I can make it clear whether I think it meets the -- that
23 standard.

24 So we're not going to drag this out for years through
25 motions to dismiss and things like that. We would probably

1 start discovery in parallel even if there were motions to
2 dismiss.

3 I know there's another case in another district in
4 which -- and, again, I asked the plaintiffs if they wanted
5 this, and it wasn't clear they did, but they were doing
6 discovery before the ruling on the motion. And that happens in
7 certain cases, expedited discovery before a preliminary
8 injunction motion is ruled upon. And so do you have any
9 objection to that?

10 **MR. GARDNER:** Well, so I think you're referring to
11 the New Mexico case before Judge Chutkan?

12 **THE COURT:** I think that's one of them, yes.

13 **MR. GARDNER:** That's my case, one of many.

14 **THE COURT:** So how hard would it be, then, since
15 you're getting discovery in that case?

16 **MR. GARDNER:** Well, that's not necessarily the case,
17 Your Honor. The way Judge Chutkan structured it is plaintiffs
18 could file a motion to seek discovery. We would then respond,
19 and then the Court would take up whether or not discovery is
20 appropriate.

21 So I don't want to suggest that Judge Chutkan has already
22 allowed discovery to go forward because that's -- that's not
23 correct. She has allowed plaintiffs the opportunity to make
24 the case why they need discovery.

25 Our response to that is due today, actually, and then our

1 motion to dismiss is due next week.

2 **THE COURT:** Well, I mean, it seems to me there's
3 clearly a need for discovery, it's just a question of when,
4 right? I mean, I saw you nodding when I was talking to the
5 plaintiffs about, you know, isn't this a factual dispute about
6 what happened. And that usually means we need discovery.

7 So -- so, I mean, I guess your position, obviously, is
8 that you're not willing to provide anything now, is that what
9 it is?

10 **MR. GARDNER:** Well, I would certainly have to go
11 back, Your Honor, and consult with my client. I don't have the
12 authority to tell you that, yes, USAID is going to produce X,
13 Y, and Z.

14 But, again, I would emphasize that I do think on the
15 current record, the declarations are sufficient to allow you to
16 resolve the issues in the preliminary injunction.

17 **THE COURT:** They might be sufficient, but if I said I
18 needed -- I'm not saying full-blown discovery, I needed a
19 certain number of documents that either have been referenced or
20 must exist based on what we have, would the government be able
21 to provide those?

22 **MR. GARDNER:** Again, I have to go back. I'm not
23 trying to be difficult with you, Your Honor, I just --

24 **THE COURT:** What if it was an order from the Court?

25 **MR. GARDNER:** Well, obviously we would follow all

1 lawful orders. I would hope so at least, Your Honor. That's
2 been my experience in the department.

3 **THE COURT:** Okay. So anyways, standing, you were
4 raising this issue of whether things can be traced back. And,
5 I mean, there's a line of cases, I think you even cited one of
6 them, in which certainly the -- even if we accept the view that
7 there are folks at USAID who would have to -- well, maybe. I
8 don't think the plaintiffs accept this, but if I were to take
9 the position that there were folks at USAID who could do the
10 things necessary to address some of the harms with some the
11 injuries, that if there is -- you could still have a scenario
12 where someone is able to, you know, be subject to suit because
13 they actually are in a position where whatever -- if they are
14 ordered to do something, it actually could impact the end
15 result.

16 And so, it seems to me, their theory is that Mr. Musk and
17 DOGE have such a -- have such great influence over what's
18 happening at USAID, particularly on these kinds of issues, that
19 if they were ordered to do something, that it would happen,
20 because everything else that they have asked to have happen has
21 happened, what's wrong with that reasoning?

22 **MR. GARDNER:** It runs directly in contravention of
23 what Pete Marocco testified to in his declaration, that all the
24 actions challenged by the plaintiffs were taken by Secretary
25 Rubio or Mr. Marocco or USAID employees at their direction.

1 That's declaration, Paragraph 23.

2 And so --

3 **THE COURT:** Isn't the point, though, that even if
4 they agree to do these things, if the whole way it happened
5 factually was that DOGE and Mr. Musk said we want these things
6 to happen, maybe even that the President wants these things to
7 happen, and so they complied, so they have a level of just
8 causative impact on what happens at this department, that yes,
9 I suppose if they had sued USAID, then USAID could be -- you
10 probably wouldn't have a good argument on standing as to them.
11 But even one level up the chain, again, under their theory,
12 that Mr. Musk has so much control over these issues, where
13 there's certainly evidence that they have -- had great
14 influence over the situation -- again, we're not talking about
15 even proximate causation, but the traceability standard is just
16 that there is some -- it was caused in part or the conduct is
17 caused in part by the defendant, I mean, that seems pretty
18 easily satisfied here.

19 And are you saying that you disagree with the idea that it
20 could be this intermediate party who has such influence, and
21 whatever they do has such influence over the final actor that
22 standing can exist under those circumstances? That seems to be
23 their theory on these types of injuries.

24 **MR. GARDNER:** Well, and I will say, that theory is
25 based wholly on circumstantial evidence, which, again, if they

1 have got the burden to establish standing, it seems to me that
2 they cannot establish standing based on a circumstantial theory
3 that Elon Musk wielded and influenced in a very particular way
4 that's in contravention to what Mr. Marocco testified to.

5 **THE COURT:** But aren't you asking us to -- again, I
6 mean, look, sorry to cut you off. But *Equity Athletic*
7 *Incorporated* from the Fourth Circuit, 639 F.3rd 91, I mean, as
8 I understand it, I'm supposed to assume that the merits will be
9 resolved in favor of the party invoking it -- invoking or
10 bringing this case. And then I have to look at that situation
11 and say could be this redressed.

12 And if I assume, as they have alleged, that Mr. Musk has
13 this kind of influence, then I'm not sure why the harm couldn't
14 be addressed.

15 **MR. GARDNER:** I view the Fourth Circuit's decision in
16 *Equity* as addressing the question on a motion to dismiss
17 accepting as true the factual allegations, and that is
18 certainly the case.

19 But on a motion for preliminary injunction, where
20 plaintiffs have the burden, both, of showing all four factors,
21 including likelihood of success on the merits, and the burden
22 to show standing, we do believe that plaintiffs need to show
23 that, in fact, there is something that was caused by the
24 defendants that can be redressable by the courts.

25 And even if you took away the burden, the fact that we

1 have put on affirmative evidence, that they have not been able
2 to refute with any actual evidence of their own, supports the
3 conclusion that they cannot show causation of redressability.

4 **THE COURT:** What about the President's statement that
5 he put Mr. Musk in charge, and that they are shutting down
6 USAID, and that Mr. Musk had that discussion with him?

7 And there was nobody from USAID in any of those
8 discussions. I mean, that seems to counter what Mr. Marocco
9 says.

10 **MR. GARDNER:** Right.

11 **THE COURT:** Should I believe the President or should
12 I believe Mr. Marocco?

13 **MR. GARDNER:** So I would never stand before this
14 Court and tell you what I understand the President or any other
15 public official to mean when they say what they say. That is
16 not what I'm here to do.

17 **THE COURT:** But, again, it's evidence.

18 **MR. GARDNER:** Yes.

19 **THE COURT:** I mean, these are facts.

20 **MR. GARDNER:** Yes.

21 **THE COURT:** So it could be viewed different ways.

22 And why isn't that a fair inference, that Mr. Marocco may
23 say that he signed on the dotted line, but these other actors
24 are the ones making these decisions, or at least that's what
25 they are saying themselves?

1 **MR. GARDNER:** Right. And so I think for that, Your
2 Honor, I would take you back to the letter to senate
3 appropriations that Secretary Rubio submitted, that is, I
4 believe, Exhibit C to the Marocco declaration, and that shows
5 that what USAID is intending to do, or the State Department is
6 intending to do, is a reorganization in consultation with
7 Congress.

8 So I know there are news clippings saying that USAID is
9 going to be decimated or whatever --

10 **THE COURT:** Well, Mr. Rubio's letter -- or Secretary
11 Rubio's letter specifically references abolishing the
12 department or the agency, which frankly is not -- again, as I
13 mentioned, is not in the appropriations statute as anything
14 that is even contemplated.

15 But he went beyond what's in the statute. He referenced
16 abolishing the agency, as has Mr. Musk, as has the President.
17 They have all talked about shutting it down, either that it has
18 been shut down or it will be.

19 **MR. GARDNER:** Right.

20 **THE COURT:** So how am I supposed to read that as a
21 reorganization?

22 **MR. GARDNER:** Well, I don't read his letter, unless I
23 am misremembering it, as saying that the Secretary of State
24 intends to shut down USAID. I understood him to say we need to
25 consult with you for a reorganization. And I could be

1 misremembering --

2 **THE COURT:** The very last line, "The remainder of the
3 agency may be abolished consistent with applicable law."

4 **MR. GARDNER:** It doesn't say, though, that it will,
5 right? I mean, that's -- I think it's saying it may be.
6 That's a possibility. But I don't think that is a conclusion.

7 **THE COURT:** Well, it also says it may move and
8 reorganize and so forth.

9 And, again, you take his statement of at least conditional
10 intent along with everything the President, Mr. Musk has
11 said --

12 **MR. GARDNER:** Right, right.

13 **THE COURT:** A wood chipper usually isn't a
14 reorganization, as far as I recall.

15 **MR. GARDNER:** I don't even know what that means, Your
16 Honor. I saw the same thing that plaintiffs saw. I read the
17 news. But I --

18 **THE COURT:** I mean, to me, it says that they are
19 shutting the agency down. What other -- what other
20 interpretation would you give me?

21 **MR. GARDNER:** I'm not going to interpret what public
22 officials say outside of litigation. I can't do that.

23 **THE COURT:** Well, that's part of the litigation.
24 These are statements by a party opponent.

25 **MR. GARDNER:** They are, but they are public

1 statements, they are subject to cross-examination or
2 deposition. So again, I --

3 **THE COURT:** They may be later in the case.

4 **MR. GARDNER:** Perhaps. And when we get to that later
5 it the case, and it's the kind of evidence that is, you know, I
6 think credible --

7 **THE COURT:** My point is this, is again, I mean, if
8 you're acknowledging that we have -- we don't have those
9 opportunities, why aren't those statements relevant for
10 analyzing whether it's redressability or the merits, or
11 anything else, you're saying I can't consider those?

12 **MR. GARDNER:** I didn't say you can't consider them.
13 I just think that in terms of circumstantial evidence, it's not
14 particularly powerful when you line it up with the actual sworn
15 declarations that we provided in this case. So I think, you
16 know --

17 **THE COURT:** So you're saying that Mr. Marocco, to the
18 extent I think it's inconsistent, he's contradicting the
19 President and Mr. Musk.

20 **MR. GARDNER:** I'm not sure there's a conflict.

21 **THE COURT:** I mean, I think there is. You're telling
22 me to believe Mr. Marocco and not the President?

23 **MR. GARDNER:** I'm telling you that Mr. Marocco has
24 provided a statement under oath to this Court, and there's no
25 reason to think that that's not correct.

1 **THE COURT:** Okay. Let's move past standing. I'm not
2 really that concerned about standing.

3 **MR. GARDNER:** Yes. Understood.

4 **THE COURT:** Appointments clause.

5 **MR. GARDNER:** Yep.

6 **THE COURT:** So as we said, there's some factual
7 issues here that obviously can't be completely sorted out.

8 But let me ask you, your theory on -- I understand the
9 concept that you're saying, well, so long as Mr. Marocco or
10 someone else from the agency signs off on it, rubber stamps it,
11 whatever you want to call it, that there's no violation, and I
12 understand the concept there, but is there any authority or
13 case law or anything else that bolsters that theory?

14 I know there's -- it's a relatively thin body of law on
15 this issue.

16 **MR. GARDNER:** Right.

17 And I want to answer your question directly. So the
18 answer is, I'm not aware off the top of my head, but I think
19 the reason is that these issues often show up, and I think you
20 alluded to this, typically in the context of things like ALJ
21 and quasi-judicial bodies. And I think the key here, and the
22 D.C. Circuit's decision in *Landry* really drives this point
23 home, that in order to have an appointments clause issue, there
24 has to actually be an office established by law, i.e., by
25 Congress.

1 And I think that's what makes this case so different than
2 the cases my colleagues on the other side were talking about,
3 right? Because the reason why you don't conclude that senior
4 advisors to the White House, White House counsel, and those
5 kinds of positions are subject to the appointments clause is
6 because those are not positions that Congress has established.
7 Those are positions that are internal to the White House.

8 And I think the *Landry* case in the D.C. Circuit really
9 drives that point home. And plaintiffs have not cited to a
10 single appointments clause case that concluded that someone
11 that was not the subject of a congressionally created position
12 has somehow violated the appointments clause.

13 **THE COURT:** But no one has rejected that theory
14 either. I mean, frankly, I'm not sure this has ever happened
15 before.

16 So -- but you're saying it's kind of an open field, or are
17 you saying there's something that forecloses that argument that
18 you can identify?

19 **MR. GARDNER:** Well, I think the *Landry* decision from
20 the D.C. Circuit -- and Court's indulgence. The D.C. Circuit
21 decision is 204 F.3d 1125, the D.C. Circuit in 2000. And what
22 that decision says, as I read it, is that one of the
23 preconditions to triggering the appointments clause is to have
24 a position that is established by law, i.e., by Congress.

25 And here, I don't think there's any dispute between the

1 parties that a senior advisor to the White House is not a
2 congressionally created position.

3 So am I telling you that *Landry* completely forecloses this
4 argument? I am not sure I would go that far. But I think it
5 is a precondition to the appointments clause, and that
6 precondition is clearly not satisfied here.

7 **THE COURT:** Okay. So would you agree -- and, again,
8 I know you're not going to agree with this factually, but if --
9 assuming for the sake of argument that Mr. Musk was -- caused
10 the shutdown of USAID, or someone, even if you just make it a
11 hypothetical person, would that person be exercising
12 significant authority?

13 **MR. GARDNER:** If they -- if they were personally
14 responsible for shutting down a complete agency --

15 **THE COURT:** Yes.

16 **MR. GARDNER:** -- is that the --

17 **THE COURT:** Yes.

18 **MR. GARDNER:** I think I would --

19 **THE COURT:** I mean, ordering it or something, or
20 causing it to happen by their own direction.

21 **MR. GARDNER:** Right, right. Right.

22 I think the problem there with the hypothetical is it's
23 slightly incomplete because that person who would be doing the
24 ordering would also need to hold a continuing position. And I
25 think that's --

1 **THE COURT:** Well, no, but I said significant
2 authority. I didn't say it was an appointments clause. That's
3 the first problem.

4 **MR. GARDNER:** No, no. I understand. Just to
5 complete the hypothetical. While it may satisfy one of the
6 preconditions to the appointments clause, without more
7 information, it wouldn't satisfy the second.

8 **THE COURT:** I mean, do you agree that the continuing
9 office issue doesn't necessarily mean it's a 200-year-old
10 office, like Secretary of State?

11 **MR. GARDNER:** Of course.

12 **THE COURT:** I mean, these independent counsel are --
13 don't seem particularly continuing, but the courts have found
14 that they were continuing.

15 **MR. GARDNER:** Right.

16 And I think the big difference between -- I think you're
17 talking about *Morrison v. Olson*. And this case -- remember, in
18 *Morrison v. Olson*, one, the special -- the independent counsel
19 was a position created by Congress; and two, it wasn't personal
20 to Mr. Morrison.

21 Remember what happened in *Morrison v. Olson* was there was
22 an independent counsel before Mr. Olson, I believe his name was
23 Mr. McKay. And that's one of the big defining differences
24 between what's going on here and what happened in *Morrison*.

25 I don't think there's any dispute that the reason why

1 Mr. Musk is a senior advisor of the President is because he's
2 Mr. Musk. And I don't think there's any --

3 **THE COURT:** Well, isn't that a factual issue?

4 So, going back to the other one, I mean, I agree with you,
5 there's a distinction there, but wouldn't the very first
6 independent counsel, if one really analyzed it correctly, still
7 be deemed to be in a continuing office even though they weren't
8 the second, they were the first? So --

9 **MR. GARDNER:** Yes. But the point of that position,
10 Your Honor, is that when you have additional people filling the
11 role, it's not personal to the person, and that's the defining
12 difference with a continuing position.

13 **THE COURT:** But the executive order about DOGE
14 doesn't say this is about Mr. Musk. It creates an entity, and
15 I guess we've been now told there's an acting administrator who
16 is not even Mr. Musk.

17 So it seems like the entity is not -- I mean, I know you
18 have a dispute over whether he's actually part of DOGE, that
19 he's off to the side as a senior advisor having nothing to do
20 with DOGE, which seems factually inaccurate when you look at
21 everything they have been saying publicly.

22 But if -- the point is, the DOGE operation seems to be an
23 entity not just a personality, because there's another person
24 in a role there, the executive order doesn't define it by
25 person, it defines it as a concept with a function.

1 **MR. GARDNER:** Right. So I think maybe we need to
2 take this one step at a time.

3 We've got Mr. Musk and whether he's an officer under the
4 appointments clause, and then we have whether the DOGE itself
5 somehow is violative of the appointments clause. And so I can
6 address each of those in turn.

7 **THE COURT:** Either way. I mean, again, you create an
8 office of an independent counsel -- I haven't looked at the
9 documents that establish those things and examples from the
10 cases, but I would imagine they didn't name a person. They
11 said we need somebody to do this independent counsel function.

12 **MR. GARDNER:** Right.

13 **THE COURT:** And that's part of the argument why it's
14 a continuing office even though somebody might have -- it's not
15 an office in perpetuity.

16 But, again, the document that created the DOGE
17 organization doesn't seem similar, it describes a function that
18 needs to be done even on a temporary basis. And so there's
19 that.

20 And then, again, it seems as if the way it's operating,
21 the person running that is at least doing some pretty
22 significant things. I'm not going to say significant
23 authority, but doing some significant things.

24 **MR. GARDNER:** So, again, I just want to make sure
25 we're not conflating things.

1 There's nothing in the executive order that names Mr. Musk
2 as a senior advisor to the White House. Right?

3 **THE COURT:** Or -- or the head of DOGE or anything
4 else.

5 **MR. GARDNER:** Because he's not the head of DOGE, Your
6 Honor.

7 **THE COURT:** Who was the head of DOGE before
8 Ms. Gleason?

9 **MR. GARDNER:** I can't answer that. I don't know.

10 **THE COURT:** I mean, that seems like such a knowable
11 fact, though, doesn't it?

12 **MR. GARDNER:** I am sure it is knowable, I just don't
13 know it.

14 And, again, I'm very conscious about being very accurate
15 with all courts, and I just can't make a representation to
16 you --

17 **THE COURT:** Have you asked anybody?

18 **MR. GARDNER:** I have not asked.

19 **THE COURT:** So, again --

20 **MR. GARDNER:** Actually -- strike that. Strike that.
21 That is untrue.

22 I have asked previously and I was not able to get an
23 answer when I previously asked.

24 **THE COURT:** Okay. I mean, are you saying there was
25 somebody or that there was nobody until this new person was put

1 in?

2 **MR. GARDNER:** I'm not saying either way, because I
3 don't know. And I'm not trying to be difficult with you, and
4 I'm not trying to frustrate you, I just want to be precise and
5 accurate with you about what I know and what I don't know.

6 **THE COURT:** So is there a piece of paper that -- you
7 know, an appointment paper, one of those -- I mean, I think you
8 work in the federal government, you've seen these before, where
9 maybe it's SF-50, I'm not sure, that says you've got this job
10 now.

11 Is there one that says Elon Musk, Senior Advisor to the
12 President?

13 **MR. GARDNER:** Sorry, let's just back up a step.

14 So now you're not talking about the DOGE administrator,
15 but you're now talking about Elon Musk?

16 **THE COURT:** Well, I mean, they are disputing -- they
17 are saying he was the head of DOGE. You're saying he wasn't
18 but we can't tell you who was.

19 **MR. GARDNER:** Right.

20 **THE COURT:** Which, admittedly, is highly suspicious.
21 I'm not saying that you're not being candid, but just the whole
22 operation, it raises questions.

23 And so given that, again, there's an affidavit saying he's
24 the Senior Advisor to the President, but given that strange
25 disconnect, where he has always referred to himself in public

1 as affiliated with DOGE, and not as a Senior Advisor to the
2 President, until recently, after these lawsuits were filed,
3 having some backup documentation for that would seem to be a
4 useful thing.

5 **MR. GARDNER:** I understand, Your Honor.

6 I will say the Fisher declaration goes further.

7 **THE COURT:** I was asking, does that document exist?

8 **MR. GARDNER:** And, again, I'm not trying to frustrate
9 you, I don't know the answer to that.

10 But I will just very quickly tell you that the Fisher
11 declaration goes further than that, right?

12 **THE COURT:** Okay.

13 **MR. GARDNER:** The Fisher declaration says, if I
14 recall correctly, that Mr. Musk, not only is he a senior
15 advisor employed by the White House, but he is not employed by
16 the DOGE and he's not the DOGE administrator.

17 So I think it does more than just simply say where he
18 works, it also says where he does not work.

19 **THE COURT:** Okay. I think that's a fair point.

20 So I asked if you could provide any records showing who
21 actually ordered the shutdown of the USAID -- maybe not these
22 specific things, but key facts, you know, who ordered the
23 shutdown of the USAID office, the removal of the sign, taking
24 down the website. Is there anything that shows on paper or
25 electronically who actually made that decision?

1 **MR. GARDNER:** Yeah, I -- I can certainly take that
2 back, Your Honor. I just don't know the answer.

3 **THE COURT:** Or placing everyone -- placing on leave
4 or terminating USAID employees or terminating contracts and
5 grants. I mean, is there someone -- is there something that
6 shows who made those decisions?

7 **MR. GARDNER:** Well, certainly -- and I don't just
8 want to repeat myself, but certainly the Marocco declaration
9 expressly says that all the decisions challenged in this case
10 were done either by Secretary Rubio, Mr. Marocco, or those
11 acting under their authority.

12 **THE COURT:** There would be nothing wrong with getting
13 those documents, right? They are final decisions, they are not
14 deliberative. You just have a final thing saying, yes, go
15 ahead and terminate these people.

16 **MR. GARDNER:** Again, I am not trying to be difficult,
17 Your Honor. I certainly would have to take that back to my
18 clients to see where those documents are and what we can do
19 about that. I can't make a representation here without talking
20 to my clients.

21 **THE COURT:** Okay. But going back to my earlier
22 question, though, leaving aside the continuing office issue,
23 would you agree that if someone in the executive branch shut
24 down USAID, or some other federal agency, that would be a
25 significant -- an act of significant authority, would you agree

1 with that?

2 **MR. GARDNER:** I would concede that that action would
3 be significant.

4 **THE COURT:** Okay. So it really does come down to
5 some factual questions about who actually did that, things like
6 that?

7 **MR. GARDNER:** I mean, again, Your Honor, I do think
8 the declarations answer those factual questions. I understand
9 that you want the receipts. I understand that.

10 I do think, though, that the evidence under oath does
11 answer those questions. And if you think that there are
12 fact --

13 **THE COURT:** And I wouldn't -- in an ordinary case,
14 I'm not -- I wouldn't disagree with you necessarily, but,
15 again, we have these public statements by the people involved
16 that seem to contradict his statement. And so it creates, at a
17 minimum, some confusion over here, so --

18 **MR. GARDNER:** I understand your point, Your Honor.

19 I think the answer, then, if that is the case, is to deny
20 the motion for preliminary injunction and then we proceed on --
21 you know, as the Court thinks is appropriate.

22 But it strikes me that if there is this real confusion,
23 based particularly on circumstantial evidence, the answer is
24 not to grant the preliminary injunction.

25 **THE COURT:** I mean, I thought one option was to get

1 the records, but it sounds like you're not willing to commit to
2 that. So that is unfortunate, but --

3 **MR. GARDNER:** Your Honor -- I'm sorry, I didn't mean
4 to interrupt you.

5 You have to understand my position, I have to talk to my
6 clients.

7 **THE COURT:** I do understand your position. I don't
8 mean to be difficult.

9 So -- okay. So then would you agree that terminating -- I
10 don't actually know the exact number, but it's a pretty big
11 number, terminating or placing on leave the personnel that have
12 to date -- again, if one person made all those decisions, would
13 that be significant authority? Again, assuming. I'm not
14 saying that you have to concede that point at all.

15 **MR. GARDNER:** You know, and I'm not trying to be
16 difficult with you, Your Honor. I think it would depend on the
17 magnitude. I think if we're talking one or two people, it's
18 not clear to me that that is significant authority.

19 **THE COURT:** Sure. I don't -- I agree with you on
20 that, but --

21 **MR. GARDNER:** I think 90 percent of an agency, I
22 think that might be possible. I am not sure we have ever seen
23 any cases that try to qualify --

24 **THE COURT:** Sure.

25 **MR. GARDNER:** -- or quantify, I should say, what

1 level of employment actions would be necessary to create
2 significant action under the appointments clause. So I think
3 we're all sort of flying blind here.

4 But --

5 **THE COURT:** Sure.

6 **MR. GARDNER:** -- I would think it stands to reason
7 that the larger the numbers, the more likely it could be deemed
8 significant.

9 **THE COURT:** So 50 percent?

10 **MR. GARDNER:** I couldn't stand here and give you a
11 number, and I don't think there's any case that would give you
12 guidance on that.

13 **THE COURT:** What about contracts, same thing,
14 different analysis?

15 **MR. GARDNER:** I mean, the government --

16 **THE COURT:** Terminating all the contracts versus
17 some, versus one or two?

18 **MR. GARDNER:** I think, again, there's no case that
19 I'm aware of that would indicate what magnitude of contract
20 cancellation would constitute significant power. But I do,
21 again, as a reasonable person, think that there comes a point
22 in time where that magnitude gets so great that it could
23 reasonably be concluded that --

24 **THE COURT:** Okay. So there could be a number, you're
25 not sure what it is, and I understand nobody really does.

1 **MR. GARDNER:** I don't think anybody knows what it is.

2 **THE COURT:** So far. Okay. Yes, I understand.

3 And then what about freezing all contract grant payments
4 either basically a hundred percent, but maybe not exactly, a
5 few exceptions, but pretty close to all?

6 **MR. GARDNER:** Again, same --

7 **THE COURT:** Significant authority?

8 **MR. GARDNER:** Same answer, Your Honor. I think it
9 depends on the magnitude. We have no case law to support, you
10 know, what threshold that would be. But at some point, it
11 stands to reason that if you freeze all contracts within an
12 agency, that would be an exercise of significant authority.

13 **THE COURT:** And in this case, that's actually
14 happened, right? Or at least --

15 **MR. GARDNER:** Well, I'm not sure --

16 **THE COURT:** Again, I'm not saying I know who did it,
17 but that freeze did happen?

18 **MR. GARDNER:** My recollection -- and, again, I want
19 to make sure I'm being very accurate here, is I believe that
20 some of those contracts have been unfrozen and are now back in
21 place. That's my recollection.

22 **THE COURT:** Right. I mean, I think it was either a
23 hundred percent, and then a few were taken away, or is
24 90-something percent with a few exceptions to avoid
25 100 percent. But it was pretty darn close, wasn't it?

1 **MR. GARDNER:** So I don't recall, and I don't want to
2 speculate.

3 But what I will say, though, again, is -- and you may not
4 give him credit, but Mr. Marocco says those decisions were made
5 by him.

6 **THE COURT:** No, I understand.

7 But I'm just trying to see where -- where there's a
8 dispute among the parties and where there isn't. It sounds
9 like there's not really a dispute that, you know, the freeze
10 order would be significant authority, but there's obviously a
11 big dispute about who made that decision.

12 Is that fair?

13 **MR. GARDNER:** I think that is fair, Your Honor.

14 **THE COURT:** Okay.

15 **MR. GARDNER:** I do.

16 **THE COURT:** Okay. Do you have a reaction to the
17 Federal Vacancies Reform Act discussion in the reply brief?

18 **MR. GARDNER:** I do.

19 **THE COURT:** I know that was in the reply brief, so
20 you didn't not write anything on it.

21 **MR. GARDNER:** I do. And as Your Honor noted, the
22 first time this issue is raised, in the reply brief. And I
23 would also note that USAID is not a defendant to this case.

24 But putting those two sort of threshold issues aside, this
25 argument fails on the merits.

1 The Federal Vacancy Reform Act is concerned with those
2 holding certain titles. And plaintiffs mistakenly claim that
3 Mr. Marocco was the Acting Deputy Director of USAID. But
4 that's not factually correct, as reflected in that February 3rd
5 letter that Secretary Rubio sent to the Senate Appropriations
6 Committee delegating Mr. Marocco the authority to perform the
7 duties of the Deputy Administrator of USAID.

8 In other words, just to be clear about this, Mr. Marocco
9 does not hold the title of Acting Deputy Administrator, rather
10 he is performing the duties.

11 **THE COURT:** No, I understand the distinction.

12 **MR. GARDNER:** And that's a distinction that --

13 **THE COURT:** Sadly, we have cases where this sort of
14 thing has come up, so I understand the distinction.

15 **MR. GARDNER:** Yes. And that distinction has massive
16 legal significance, because plaintiffs cite to no authority
17 that appointing someone to serve the duties of a position that
18 is subject to the Federal Vacancy Reform Act must itself
19 satisfy the Federal Vacancy Reform Act. And case law seems to
20 be to the contrary.

21 So one case I can give you, Your Honor, is a case called
22 *Arthrex v. Smith & Nephews, Inc.*, a case from the Federal
23 Circuit, 35 F.4th 1328 from 2022.

24 **THE COURT:** Okay. Well, I think their point, if I'm
25 not mistaken, was perhaps it was to refute his assertion that

1 he approved all of these things, and saying that if he did, it
2 wasn't legitimate.

3 But we're still back to our original dispute of whether it
4 was Mr. Musk or his people, or whether it was Mr. Marocco and
5 his USAID people who are actually making these decisions as a
6 factual matter.

7 You're just saying that the claim that if I conclude that
8 he did make those decisions, but somehow we can't consider
9 those because of the FVRA, that that would be not legally
10 correct?

11 **MR. GARDNER:** That is correct, Your Honor.

12 I understand -- and plaintiffs can obviously speak for
13 themselves better than I can speak for them, but my
14 understanding is their argument is that even if Mr. Marocco had
15 made these decisions, he did so unlawfully because he's
16 violating the Federal Vacancy Reform Act. And our point is, he
17 has not violated it because he's performing the duties of
18 rather than actually being the acting deputy.

19 **THE COURT:** So there is no deputy or acting deputy
20 right now, correct? Just the way --

21 **MR. GARDNER:** I believe that's correct. I believe
22 it's just Mr. Marocco serving the duties of the acting deputy.

23 **THE COURT:** Okay. So on the separation of powers
24 issue, I asked some of these questions of your counterpart, and
25 while you take different -- you're in different places in this

1 case, some of these I'm thinking there may be some agreement
2 on.

3 Do you agree that shutting down and terminating an agency
4 is congressional, that that's congressional authority and not
5 executive authority? I mean, again, I'm not -- you may
6 disagree on whether that's happened yet, but do you agree that
7 that would be something that the President can't do
8 unilaterally? Or the executive branch?

9 **MR. GARDNER:** I think I would say it this way, Your
10 Honor, just to be careful, I want to be thoughtful about this,
11 I think in a circumstance where Congress has created an agency
12 by statute, I don't think the President could unilaterally
13 completely eliminate that agency.

14 **THE COURT:** And is that -- isn't that where we are
15 here? I mean, there is a statute that established USAID.

16 **MR. GARDNER:** Well, again, I think I fight the
17 premise that USAID has been completely dismantled.

18 **THE COURT:** I agree. I think that's a factual
19 question.

20 **MR. GARDNER:** Yeah.

21 **THE COURT:** But, again, just as a legal question,
22 if -- I mean, I'm just trying to understand sort of where the
23 disputes on the spectrum of, you know, what actions might be a
24 separations of power violations and what might not be. And
25 that one seemed to be furthest over to the side of this really

1 is something only Congress can do.

2 **MR. GARDNER:** Right. I mean, I think the problem,
3 Your Honor, is, one, as my colleague on the other side
4 acknowledged, part of their separation of powers argument
5 simply collapses in the appointments clause argument. So I'm
6 not going to rehash any of that stuff.

7 **THE COURT:** Right. And I don't think -- I don't
8 think there's anything wrong with that argument, but I think
9 the ground that we covered relates to that.

10 **MR. GARDNER:** Agreed. I didn't mean to interrupt
11 you.

12 **THE COURT:** Sure.

13 **MR. GARDNER:** But then the second piece of it, it
14 seems like a large piece of their separation of powers argument
15 is that the executive branch is violating congressionally
16 enacted statutes. And that really is just an ultra vires claim
17 more than anything, rather than a true separation of powers
18 claim.

19 And so to the extent they are saying that, you know, USAID
20 or the defendants did something that's in violation of an
21 operative statute, that's not really a separation of powers
22 claim as it's traditionally conceived, that's just the
23 executive branch violating a federal statute. That's ultra
24 vires.

25 **THE COURT:** Well, no, I mean, they reference the

1 statutes. I mean, I understand -- I mean, they reference
2 *Youngstown* as well.

3 As I understand the argument, and I think you would
4 probably agree with this, is that whether it's violating a
5 statute or not is at least relevant evidence on the question of
6 whether there's a violation of the separation of powers. It
7 puts you into, arguably, one of these various categories under
8 *Youngstown*. But it's not -- I mean, it's not dispositive one
9 way or the other, but it's something that we should be thinking
10 about.

11 But ultimately, the question is, whether the President can
12 do this. And whether he's -- Congress has told him not to do
13 it in a statute or has told him he could do it, or somewhere in
14 between, is relevant, so we should talk about it.

15 But I'm not taking the view, and I'm not sure they are
16 either, that that's the be-all, end-all of their argument.

17 **MR. GARDNER:** Right. I mean, and look, we can
18 definitely talk about *Youngstown* and the fact that foreign
19 affairs authority is a shared authority between the executive
20 branch and Congress, and how that is, I think, negotiated or
21 shared.

22 But we are in that *Youngstown* -- sort of *Youngstown* 2
23 territory where there is shared responsibility and authority
24 under the constitution for foreign affairs powers, which
25 clearly the USAID falls into that category.

1 Now, what the metes and bounds are with that, we can
2 certainly have that discussion.

3 I think we already talked about completely shutting down
4 the agency, but I'm happy to answer any additional questions
5 you have about that.

6 **THE COURT:** Sure. On that front, there's a couple of
7 different ways to look at this. It seems to me, along the
8 lines of my discussion with your -- with the plaintiffs, is
9 that, would you agree, and maybe this is similar to our other
10 colloquy, but certainly terminating an employee here or there,
11 or even a small percentage, or shutting -- terminating some
12 contracts, I'm not sure what statutes those violate. They
13 might violate various personnel or contracting laws, but, you
14 know, again, that's not sufficient. And I don't think they're
15 arguing, and I probably would not agree, that that is a
16 separations of powers violation.

17 But I think part of the argument here that they are
18 offering is that there's some point at which by terminating
19 enough people or terminating enough contracts, that one of two
20 things could happen. One, is that it could effectively be
21 shutting down the agency overall, and again I'm not sure what
22 percentage or whatever gets you there, it's probably a
23 fact-based question. But would you agree that stopping
24 contracts, grants, employees to the point that it effectively
25 shuts down the agency would be the same thing? Or there's at

1 least a scenario you can see where that would be the same thing
2 as shutting down the agency.

3 **MR. GARDNER:** I think this gets to a very difficult
4 question, Your Honor, and that is sort of on the one side,
5 thinking about the unitary executive and Article II authority
6 to control the workforce on the one hand, and then on the other
7 hand a federal statute which creates a federal agency. And I
8 think this, you know, if we could spin out some hypotheticals,
9 we could probably get to a place where those two constitutional
10 prerogatives are in direct conflict. How that conflict gets
11 resolved, we would be breaking some new ground, I think.

12 But I do think that is a very significant question that
13 this Court would have to resolve before concluding there's a
14 separation of powers violation.

15 **THE COURT:** But then on -- I think they identify one
16 issue, which is maybe it's in the realm of a de facto shutdown
17 of the organization, and maybe there's some point at which you
18 get there. Unclear what that point is.

19 The other argument they seem to offer in this regard is
20 that the -- by terminating all of these employees or these
21 contracts, they are basically impacting -- I mean, they are
22 going against Congress' authority with respect to, you know,
23 the power the person who has spending authority because they
24 are saying that Congress has appropriated this money.

25 And yeah, sure, maybe you terminated one person, and you

1 don't pay for that slot for a year, that happens. But when
2 you're doing it on that scale, you're now going beyond what the
3 President can do.

4 **MR. GARDNER:** Right. And, again, I'm not trying to
5 repeat myself, I think that's what gets into the very authority
6 issue about Article II authority over the, you know, the
7 federal workforce plus the shared power over foreign affairs.
8 And I think you would have to balance both of those things
9 against, you know, the prerogatives of Congress in that shared
10 space.

11 **THE COURT:** So -- okay. So you agree, though, that
12 people can look at this differently and that there's at least a
13 legitimate argument to be made that at some point, you have so
14 reduced or stopped the spending that you are now potentially
15 violating Congress' authority as a matter of separation of
16 powers?

17 **MR. GARDNER:** Again --

18 **THE COURT:** Whether we agree on whether that happened
19 here yet --

20 **MR. GARDNER:** Right.

21 **THE COURT:** -- or not is a different question. But
22 just legally --

23 **MR. GARDNER:** Putting aside -- putting aside the
24 factual predicate of whether it happened or not, I think
25 academically, there could come a point in time where Congress'

1 prerogatives could trump the executive's prerogatives. Now,
2 where that line is, no one knows. I don't think there's a case
3 that's going to tell us that issue.

4 **THE COURT:** Okay.

5 **MR. GARDNER:** But I do think, though, that it goes
6 back to sort of the reason we're here today, is I'm not sure
7 that on a preliminary injunction motion based largely on
8 circumstantial evidence, this would be the perfect vehicle to
9 try to address that issue.

10 **THE COURT:** Sure.

11 Now, you also mentioned the foreign policy power. It
12 seems like a better use of that -- or that seems to come up
13 would be a better -- a better place for that to have a
14 significant role would be a question of whether the President
15 could or should send a certain amount of money for foreign aid
16 to a certain country or pull it back, under certain
17 circumstances, but here we're not necessarily talking about
18 that. We're talking about, again, physically shutting down the
19 agency, terminating, you know, large swaths of the civilian
20 workforce, most of whom are not, you know, foreign service
21 officers doing anything foreign policy related. I mean, can
22 you give an example of where the foreign policy power has held
23 sway in case law or otherwise where it wasn't about
24 interactions with foreign countries but just the operations of
25 an agency that happens to deal with foreign policy? Because,

1 frankly, this is happening in most of the agencies around the
2 government, many of the agencies around the government. It's
3 not a very different playbook, so it sure looks as if this
4 isn't about foreign policy, even though you can perhaps bring
5 that into it.

6 But are there examples where you're just talking about
7 civilian workforce or payments and you're not dealing with
8 interactions with foreign governments, and yet that power is a
9 significant factor?

10 **MR. GARDNER:** Right. So I think now that's not
11 really talking about the foreign affairs power but the overall
12 Article II powers to avoid waste, fraud, and abuse.

13 And the President has made a finding, as reflected in the
14 EO, that he believes there is substantial waste, fraud and
15 abuse within USAID. And that is based, again, on his, you
16 know, Article II prerogatives to ensure, you know, that the
17 workforce and federal government's money is being properly
18 spent.

19 So it comes up in USAID both in terms of that structural
20 Article II issue plus foreign affairs authority. But to your
21 point about other agencies, I think there's that more general
22 authority about ensuring that there is no waste, fraud, and
23 abuse in various federal agencies.

24 **THE COURT:** Is there a case that identifies that as
25 an Article II -- you know, a -- an iteration of Article II

1 power where they specifically say, well, that's sort of a
2 significant presidential authority?

3 **MR. GARDNER:** Well, I think it's --

4 **THE COURT:** Are you just taking about like, take-care
5 clause and things like that?

6 **MR. GARDNER:** Right.

7 **THE COURT:** Or do you have anything more specific
8 than that?

9 **MR. GARDNER:** No, I think it's inherent in the
10 structure of Article II itself is that the President is
11 ultimately responsible for the operations, the efficient
12 operations of the executive branch. And I don't think that's a
13 particularly controversial statement.

14 And so if we accept that proposition that it seems to
15 necessarily follow that if the President concludes that there
16 is waste, fraud, and abuse within an agency, he can take
17 actions under his Article II authority to remedy that concern.

18 **THE COURT:** Okay. And maybe -- my last question in
19 this area is sort of where we started, about -- you know, the
20 Secretary of State in the letter to Congress states that the
21 remainder of the agency after reorganization may be abolished.

22 Is that something -- do you agree that that's not
23 something that the Consolidated Appropriations Act, Further
24 Consolidations Appropriations Act contemplates as something
25 that the agency can do on its own, or that is even part of that

1 colloquy back and forth where, you know, everything else they
2 identify is what we're going to have discussions about is not
3 abolition, you agree with that?

4 **MR. GARDNER:** So -- I'm not trying to not the answer
5 the question, but here is my understanding of things.

6 The reason to have this consultation process is to give
7 Congress, the appropriators, a seat at the table and to let
8 them respond to the plans of the executive branch.

9 And so if the appropriators reach a conclusion that they
10 disagree with the reorganization plans, then certainly, my
11 understanding is, they can express those to the executive, and
12 then they work that out through negotiations.

13 **THE COURT:** But, again, the universe of things to
14 discuss seems to be in the statute, and abolishing the agency
15 is not one of them.

16 Do you agree with that?

17 **MR. GARDNER:** Well -- well, I mean, I would say it
18 this way, I think that Secretary Rubio's letter invites
19 Congress to weigh in on the plan. And if Congress thinks that
20 plan is inappropriate or invalid, the executive branch can, you
21 know, obviously start to have those conversations and take that
22 into account.

23 **THE COURT:** Okay. I know we had a significant
24 discussion with the plaintiffs about whether there's any
25 irreparable harm.

1 Is there anything that you heard from plaintiffs' counsel
2 that you disagree with factually about the state of play now?
3 Again, I thought there was going to be some effort to try to
4 address some of the needs of the particular plaintiffs. I
5 don't know if there was anything beyond what the plaintiffs
6 said. But --

7 **MR. GARDNER:** Yeah.

8 **THE COURT:** It didn't look like that much progress
9 had been made.

10 **MR. GARDNER:** So here's what I did, Your Honor.
11 We've had a similar issue in -- before Judge Bennett in
12 Baltimore in the *Students for Fair Admission v. United States*
13 *Naval Academy* case, where the plaintiffs proceeded
14 pseudonymously.

15 And in that case, we entered into a protective order that
16 Judge Bennett approved to give us access to the plaintiffs'
17 names so that we could facilitate discovery.

18 I shared that protective order with counsel for the
19 plaintiff saying this was an approach that worked, and I would
20 suggest we do that.

21 Plaintiffs' counsel is concerned that anyone who is
22 related to the DOGE has access to this information.

23 And so I have been trying to work with USAID to try to
24 identify an individual who is not related to the DOGE that I
25 could assuage them would not jeopardize their information, and

1 that process is ongoing.

2 **THE COURT:** But who would still be able to act on the
3 information in a favorable way?

4 **MR. GARDNER:** Correct. Exactly. And that's been
5 sort of the sticking point now is, you know, obviously the
6 agency, as I think we've discussed a lot today, is undergoing
7 transition. So trying to find a person who can facilitate that
8 that meets plaintiff --

9 **THE COURT:** Why is that so hard if it's really -- if
10 USAID is doing everything, and DOGE is just advisory, why is
11 that hard?

12 **MR. GARDNER:** Well, no, it's not hard, it's just
13 trying to find the correct person who has the technical ability
14 to do what it is that --

15 **THE COURT:** But you could find a DOGE person without
16 any trouble, is that what you're saying?

17 **MR. GARDNER:** No, I'm not saying that either. I'm
18 trying to find a person first and foremost, and then once I
19 find that person, make sure that it's someone who is -- that
20 plaintiffs believe is appropriate.

21 So, look, I think we're going to get there, Your Honor.
22 I -- we've sort of been doing a lot of briefing in the past few
23 days, so it is a priority, it's just being overcome by a lot of
24 other priorities.

25 **THE COURT:** So you don't -- so you don't disagree --

1 and I'm not saying there's any lack of good faith in trying to
2 do this, but practically speaking, you don't disagree with the
3 plaintiffs' position of where we are factually with these Jane
4 Does, John Does?

5 **MR. GARDNER:** Well, I mean, I think I would emphasize
6 a few things. And one, is I would draw the Court's attention
7 to Paragraph 15 of the Marocco declaration, whereas he
8 explained USAID is working diligently to restore access to any
9 employee or personal service contractor whose access was
10 terminated in error.

11 And we see through plaintiffs' only declarations that that
12 appears to be working. Because if you look at the second
13 declaration of J. Doe 9, that's at 432 of the joint exhibits,
14 Jane Doe 9 states in Paragraph 6 of her -- or of their
15 declaration that on February 19th, they obtained access to some
16 of their USAID applications. And on February 24th, they were
17 able to get the -- I believe it's pronounced Scry application
18 and work contacts back on their phone.

19 **THE COURT:** Okay. But leaving aside what people are
20 trying to do, to the extent that they are saying some things
21 haven't happened yet, you don't have any reason to doubt those
22 things at this stage?

23 **MR. GARDNER:** Without having access to the named
24 plaintiffs, it is impossible for me to verify or to dispute.

25 **THE COURT:** Okay. No, I understand that.

1 **MR. GARDNER:** And I would, I guess, just make a few
2 additional points, briefly, Your Honor. I know I took up a lot
3 of time. I want to respect your time.

4 **THE COURT:** Well, for better or for worse, you've had
5 less than the other side, so you're free to it.

6 **MR. GARDNER:** I will still try to be as brief as I
7 can.

8 I want to talk about their claim about the harm related to
9 the DOGE access of the databases. I know the plaintiffs cited
10 to a recent decision from, I believe it's Judge Boardman on
11 this court, I'd refer this Court to another decision in the
12 D.C. District Court by Judge Moss. That's the *University of*
13 *California Student Association v. Carter* case. That's Docket
14 Number 25354, and the West Law citation is 2025 West Law
15 542586.

16 Like I said, it's the D.C. District Court from
17 February 17th of this year.

18 And as Judge Moss held in that case, to establish
19 irreparable injury due to an allegation of unlawful access, a
20 plaintiff must show that information will be made public or end
21 up in the hands of someone with no obligation to keep it
22 confidential.

23 And Judge Moss in that case rejected the argument made by
24 plaintiffs, which is similar to the argument made here, that
25 mere access to personal data by government employees who are

1 not formally authorized to view it without more creates an
2 irreparable injury. He further stated that the concerns of the
3 risk of identity theft and further dissemination, pardon me,
4 was, quote, entirely conjectural.

5 **THE COURT:** Let me ask you this, though, and again,
6 maybe it's different by agency, which agency was involved in
7 that case, do you know?

8 **MR. GARDNER:** I do know. That was -- Court's
9 indulgence, Your Honor.

10 It is the Department of Education.

11 **THE COURT:** Okay. So they are all a little bit
12 different.

13 But, I mean, we started by -- I asked you, you know, where
14 did these DOGE individuals who have the technical access, where
15 do they actually work officially, and you didn't know the
16 answer to that, despite trying. I mean, have they signed
17 anything, or is there anything that shows that they --

18 **MR. GARDNER:** Are detailed?

19 **THE COURT:** Well, just --

20 **MR. GARDNER:** Yes.

21 **THE COURT:** That they have -- they have agreed not to
22 disseminate this any further, that they agree that they are
23 subject to whatever regulations may exist that prevent
24 government employees from disseminating any information?

25 I mean, there's really nothing -- we have nothing on these

1 individuals. So, I mean, if you had told me, look, they have a
2 security clearance, showed me that document, or they have some
3 other access where they've, you know, agreed, committed to
4 certain guidelines or rules, but we don't really have anything
5 like that. So that's why I was asking maybe we do.

6 **MR. GARDNER:** Well, so I will say that the executive
7 order itself from January 20th, 2025, that's Executive Order
8 14158, expressly says that the USDS shall adhere to rigorous
9 data protection standards. And that's in the executive order
10 itself.

11 I will also say --

12 **THE COURT:** But what are those?

13 **MR. GARDNER:** What are the data protection standards?

14 **THE COURT:** Right. And is there any evidence that
15 they are applying those at USAID?

16 **MR. GARDNER:** So I can't answer that question.
17 That's not in the record.

18 But I do want to mention one point that I don't think I
19 did mention earlier, and that is the notion that it is somehow
20 unusual that certain DOGE team members who are detailed to
21 USAID are also detailed to other places.

22 I am loathed to testify, Your Honor, but last year I was
23 detailed to two separate organizations while still working at
24 federal programs. It's not that unusual. I worked for both,
25 you know, Special Counsel Jack Smith and Special Counsel Rob

1 Hur at the same time. So the notion of doing multiple details
2 within the federal government, it's not unusual, in my
3 experience.

4 **THE COURT:** Okay.

5 **MR. GARDNER:** Or maybe I should say -- I should maybe
6 say it differently. It's certainly not unheard of. And I'm an
7 example of that.

8 **THE COURT:** Okay. No, I don't disagree with that.

9 But, again, I mean, is there any paperwork on, again --
10 normally, when you -- again, when you -- not everything is
11 classified. In fact, my guess is most of this isn't. But to
12 the extent that we've been told they are all these, you know,
13 concerns in general, even before this case, or this
14 administration, about information -- you know, personal
15 information that I have to assume that there is some process by
16 which people have this access are, you know, required to
17 acknowledge that they are going to follow certain rules, and,
18 again, we don't have any evidence of that. In fact, it seems
19 as if the evidence seems to be this was an abrupt transition
20 where, you know, we have evidence that Mr. Musk, you know,
21 ordered people placed on administrative leave who refused to
22 give his people access, implying that they just took the access
23 against peoples' will, and therefore, they may not have gone
24 through the same training or commitment to follow certain rules
25 or anything like that.

1 So you don't have anything, I take it, that establishes
2 that they did commit to follow certain safeguards?

3 **MR. GARDNER:** I would say it this way: There's
4 nothing in the evidentiary record before this Court now that
5 speaks to that issue.

6 **THE COURT:** Okay. Okay. Anything else you want to
7 offer on whether it's harm, or if you want to go back to
8 anything we didn't cover?

9 **MR. GARDNER:** Very briefly, Your Honor.

10 I just wanted to respond to one of my colleagues',
11 Mr. Eisen's, comments earlier today where he talked about the
12 five-question e-mail. I don't know if you recall that. It
13 feels like it was years ago now. But this was the notion that
14 Elon Musk had ordered every agency to have every employee
15 identify five things they did last week.

16 And Mr. Eisen, as I understood it, suggested that is
17 evidence of the significant authority that Mr. Musk wields in
18 the government.

19 I actually think that example is completely contrary to
20 their theory of the case, because as I know the Court knows,
21 many federal agencies said we are not going to do this. And if
22 it's the case that Mr. Musk has all this authority, then it
23 seems inconsistent with that authority for these agency heads
24 to say we are not going to do this.

25 So I think one of Mr. Eisen's, you know, primary examples

1 of this extravagant authority actually works against him.

2 **THE COURT:** I understand the point. But one thing
3 which we didn't cover, and I'm not sure we need to any further,
4 but just one of the reasons why I asked who was the DOGE
5 administrator before the current acting one, was that in cases
6 like this, it's not unusual to have a situation where things
7 are done a certain way, perhaps not within the rules or the
8 law. And then whether it's lawsuits or other things happen,
9 that all of a sudden, everyone starts trying to get into
10 compliance, which is always a good thing. No one is opposed to
11 that.

12 **MR. GARDNER:** Right.

13 **THE COURT:** But the timing may differ.

14 Now, it may affect what is the prospect -- what is the --
15 you know, the prognosis for the future in terms of what needs
16 to be done, but whether there was some sort of violation or
17 something, sometimes those violations happen early in the case,
18 and then people realize they have a problem, and so then
19 they -- instead of saying -- or shutting it down, they start
20 saying other things. Or instead of saying we -- Mr. Musk is in
21 charge of DOGE, they suddenly say, well, now he's a senior
22 advisor.

23 And I don't have a date on when that happened or anything
24 like that.

25 And again, I don't know who the acting administrator was,

1 or the administrator, but there was a period of time, which is
2 a black hole right now.

3 And so I understand your point. I think the media
4 reported that, as well now the agencies are starting to push
5 back, but that doesn't mean that there wasn't an earlier period
6 where someone did have total control. So that's what I'm
7 trying to understand.

8 But I get your point that it seems as if that can be read
9 different ways.

10 **MR. GARDNER:** Right.

11 And, again, I don't want to repeat myself, I do want to be
12 clear, that we do know definitively from Josh Fisher's
13 declaration that whomever may or may not have been the acting
14 DOGE administrator, it was not Mr. Musk. And Mr. Fisher's
15 declaration expressly says that.

16 And then I guess just the last point I would make, Your
17 Honor, is we've talked a lot today, and I think you talked with
18 my colleagues on the other side about these open factual
19 questions.

20 Again, I just want to reiterate, because the plaintiffs
21 have the burden of proof to establish these four requirements.
22 And because they essentially acknowledged they don't have the
23 evidence to establish this, we respectfully request that
24 plaintiffs' motion for preliminary injunction be denied.

25 **THE COURT:** Okay. Thank you.

1 I did say, even though I think overall the government
2 still had less time, but again, that's not -- some of the time
3 taken was because I asked questions, so I'll -- some brief
4 rebuttal, if you would like, from the plaintiffs.

5 Really just on very specific things that you want to
6 respond to from Mr. Gardner, not really new information that
7 wasn't part of that colloquy.

8 So, Mr. Eisen?

9 **MR. EISEN:** Yes, Your Honor. Thank you.

10 I'll start on Mr. Gardner's point. I wrote it down in
11 quotation marks, "largely on circumstantial." And I think that
12 the government misunderstands the nature of the evidence.

13 I would direct the Court to our complaint, starting
14 Paragraph 47, Page 25, which has the bookends of Mr. Musk
15 saying he's going to take control, and, quote, we're in the
16 process of shutting down, and that after it's done, this is
17 January -- this is the end of January, January 30th, and then
18 this runs on Page 26, 27, and onto 28, ending with Mr. Musk
19 saying, "We spent the weekend feeding USAID into the wood
20 chipper."

21 He's admitting it, Your Honor. He's admitting he's acting
22 as a principal officer.

23 And then in our reply brief, I would direct the Court to
24 the plethora of evidence on how he did it.

25 Mr. Kliger, acting -- I never heard of a -- Mr. Kliger is

1 detailed to five agencies. I never heard of that in all my
2 time in government, Your Honor.

3 Be that as it may, Mr. Kliger acting at Mr. Musk's behest
4 with DOGE affiliate Luke Farritor, that's -- we break down
5 exactly how they did it, and we explain that they were able to
6 render USAID inoperable. They are setting up that abolition
7 which, of course -- the Court noted, the last line of
8 Mr. Rubio's letter, of course that would be illegal, contrary
9 to the existing statutory scheme.

10 On the point of Mr. Rubio's letter and Mr. Marocco's
11 declaration, the letter in the Marocco declaration comes on
12 February 3rd, after all of this has happened.

13 So if the Court takes those portions of the complaint,
14 plus without -- we've begged the government for preliminary
15 discovery. None of the things Your Honor asked for -- I have
16 the transcript -- have been provided to us. Despite that, we
17 have put dozens of affidavits in the record.

18 The only thing circumstantial about it is that we weren't
19 there to videotape it.

20 If the smoke is pouring out of the walls and the flames
21 are shooting out of them, you can conclude that there's a fire,
22 particularly if the arsonist says, "I'm going to burn down the
23 house," and then finishes by saying, "I did it." That's
24 circumstantial in a sense.

25 **THE COURT:** Let me ask this, I understand your point,

1 on this shut down concept.

2 So we know that the headquarters building is closed, has
3 been turned over to CBP, or at least that portion of the Reagan
4 building, I believe it is. We know the website has been shut
5 down. You can't even access anything there. We know that a
6 certain number of employees have been terminated and some have
7 been placed on administrative leave.

8 Do you happen to have, you know, numbers, percentages -- I
9 talked with both sides about, well, five or six people, not
10 really an issue; 95 percent, probably a big problem. But I
11 don't actually know where we are right now, do you?

12 **MR. EISEN:** Your Honor, I would love to know that
13 basic information.

14 My understanding, from talking to our 26 clients, from the
15 mountain of evidence we've provided, from the functional --
16 from the mountain of evidence we've provided, from the public
17 record, and these affidavits from the lives of these 26 people,
18 is USAID has been functionally abolished. That is the point of
19 our separation of powers argument. I won't belabor it,
20 because --

21 **THE COURT:** Well, again, people can disagree on what
22 that means. But I'm just trying to get, you know, statistics,
23 so to speak.

24 I mean, how many contracts -- I mean, there was this
25 blanket freeze, but, like, in terms of contracts that have now

1 been formally terminated, what percentage, how many employees
2 have been terminated or in this leave category, or are still
3 working? I know there are some that are still working. Do we
4 know that?

5 And again, me being here that if one added it all up, I
6 would have that information, I just don't --

7 **MR. EISEN:** Your Honor, we have some information
8 about it, not complete information, in the Marocco affidavit, I
9 believe. And it tells us in Paragraph 11 that there are 4,765,
10 and approximately -- it tells us in 13, approximately
11 98 percent of the 2,140 employees on paid administrative leave.
12 So there's some details.

13 It goes to -- and then there's more in Paragraph 18.

14 Your Honor, it goes to 611, is another statistic in here
15 who -- that remain. It goes to -- I'm going to come to this at
16 the end of my very brief rebuttal. The Court has been so
17 patient with us.

18 It goes to -- the solution to the dilemma before us, that
19 the Court has identified from the bench, which is some very
20 expedited -- to continue the meet and confer, to get some very
21 expedited discovery, to get some answers and some
22 documentation. We've been begging, Your Honor, on this point.

23 My colleagues from DOJ, I sympathize with them. Every
24 time I see my friend Chris, if I may, he looks sleepier. And
25 so am I, Your Honor, and I'm older than he is. I can less well

1 sustain the all-nighters than he can.

2 Nevertheless, we have been asking since we filed this
3 case, and -- since we filed this case, we have been asking for
4 a person who is not a DOGE person. There's been about two
5 weeks now, Your Honor. That should not be that hard to find.
6 That allows us to do the expedited discovery that will, in a
7 matter of days, resolve this case.

8 We need that -- think of the torment for our 26 clients
9 who day after day say, have you found the person yet? Is there
10 somebody there? You can't tell Elon Musk my name. You can't
11 tell -- you can't put it in the information for these people
12 who are running the agency. Is that, if I may ask for the
13 Court, is that person so hard to find? 26 people in torment.
14 Could we turn USAID sideways and shake it a little bit to get a
15 human who is not affiliated with DOGE?

16 I'm going to quickly tick through the rest of my -- tick
17 through the rest of my list.

18 So it's not circumstantial.

19 They concede that shutting down an agency would be --
20 there are a series of concessions, what would be significant
21 authority, what would make somebody a principal officer. We
22 think we've established non-circumstantial evidence. Public
23 record, a mountain of affidavits that is, in effect, happening
24 here.

25 On the question, the factual question, does DOGE have

1 access to these sensitive records. I want to point the Court
2 to two -- to two of our declarations, if the Court will bear
3 with me.

4 The declaration, the public declaration, Exhibit 3, of
5 John Doe 2, which says DOGE personnel who did not have a
6 security clearance used their administrative rights to grant
7 themselves access to restricted areas requiring security
8 clearance. It is unclear what DOGE did with that information
9 at USAID.

10 And then if I may point the Court to Exhibit 56, it is a
11 sealed exhibit, it has -- I think I'm not giving away the
12 identifying information of the person, that sensitive access
13 includes -- the access they have includes sensitive personnel
14 data of all employees of USAID, clearance information,
15 disciplinary actions, and on and on.

16 So I would point the Court to those two items there.

17 And forgive me, I'm just going to turn my papers on the
18 documentation -- on the documentation point, I've made my point
19 that we've asked and asked and asked the things that the Court
20 wants the most basic evidence, the facts the Court said are
21 very important, I would like to know what is the actual legal
22 status of Mr. Musk within the administration and his staff?
23 How is that documented? Who are the people who have actually
24 been formally making decisions on paper? And on and on, the
25 other questions that the Court asked us.

1 If we can't resolve that promptly together with this
2 person that we need, the Court can order it. The Court can
3 order, find a non-DOGE person or put a non-DOGE person in there
4 to protect our plaintiffs while we do extremely expedited
5 discovery into these very fundamental questions.

6 **THE COURT:** Can I just get clarification on that?
7 This non-DOGE person you want, I thought what that person was
8 supposed to be for would be -- they would be -- within a
9 protective order, they would have the names of the plaintiffs.
10 They would then presumably be in a position to address some of
11 the issues that were identified by Ms. Stevens, whether it's
12 things not getting paid, bills not getting paid, people not --
13 at times not having access to the systems, things like that.

14 So that would be less discovery and more of just
15 addressing the current harm.

16 Is there a discovery aspect for which this non-DOGE person
17 is important? I mean, is there any reason why at some point,
18 when discovery starts, we don't just -- I mean, why do we need
19 somebody like that for that? We just tell them -- you know, or
20 someone issues discovery requests for documents and depositions
21 and -- so is that non-DOGE person just for this issue of trying
22 to address --

23 **MR. EISEN:** Yes, Your Honor.

24 **THE COURT:** -- just bridge the gap with the
25 plaintiffs' issues?

1 **MR. GARDNER:** We have 26 people. We've been before
2 the Court now almost two weeks. I know it's not the Court's
3 preference, but a way -- to your point about two PIs and a
4 motion to dismiss, the way courts have dealt with this in other
5 context is to do a limited TRO, and -- and in order to stanch
6 that urgent irreparable harm, and then to allow some expedited
7 discovery, and a week or two later to have a PI briefing. That
8 was where we started here.

9 I know the Court didn't want to go there. I want to keep
10 working with the government. But we may be forced into that
11 posture. That is -- it's not the Court's preference. That is
12 not an unusual situation.

13 **THE COURT:** I think I asked -- I think I asked one of
14 your colleagues whether you wanted any discovery before the
15 motion was resolved, and at least the broad answer I seem to
16 get was no, you just want the motion resolved and then you'll
17 move on to that. But maybe I misunderstood that.

18 **MR. EISEN:** Only -- I'm just putting a finer point on
19 it, Your Honor. Only because these 26 people, Ms. Stevens
20 talks to them every day, are in such urgent and dire
21 circumstances. We need a short-term fix for them --

22 **THE COURT:** I understand.

23 **MR. EISEN:** -- whether by agreement or otherwise.

24 We need this -- I believe -- I want to say, the
25 combination of circumstantial and non-circumstantial evidence,

1 Mr. Musk saying he was going to do it, saying -- DOGE saying
2 USAID has to die, and then saying he was in the wood chipper,
3 together with that very elaborate trail of crumbs we've laid
4 out for the Court, I gave you the pages, that is sufficient
5 evidence to be a predicate for success on the merits here to
6 provide this relief that we need.

7 But it would be better if we could solve the emergency.
8 That would be best of all. Take a week to get that discovery,
9 and then move to the PI stage.

10 We believe the conclusion, then, will be done. We will --
11 of course, we stand by the PI, we believe in the PI, we believe
12 we've met the records. Isn't there some more humane short-
13 solution for these 26 individuals who are suffering irreparable
14 harm, Your Honor?

15 **THE COURT:** I guess, I'm missing this point about
16 even if there were some interim ruling for the plaintiffs on
17 their harm, you're saying then we would have a week of
18 discovery, and then we do the rest of the motion? I guess, I'm
19 misunderstanding or not understanding what you're suggesting
20 there.

21 **MR. EISEN:** We're prepared -- we're prepared to
22 submit today, and we believe we've met the four requirements,
23 particularly in light of the government's utter failure to make
24 transparent the documentary trail here.

25 That being said, some other courts, I have argued there,

1 they will provide a TRO, freeze the harm if the government
2 cannot solve the problem for us, and then move from there, a
3 few days of rapid discovery narrowly crafted.

4 **THE COURT:** On what? Again, I mean, I just -- you
5 could have asked for that, like, when we started with the
6 briefing. You didn't do that. Now you're asking for it now?

7 **MR. EISEN:** Your Honor -- the Court raised it. We
8 endeavor -- the Court encouraged the parties to try to do it.
9 We diligently worked through that. We have been unable to get
10 that information.

11 At any rate, we believe we've established a sufficient --
12 a sufficient predicate. But we also think that the Court's
13 very logical request to have more information from the
14 government, it -- it's -- it's a reasonable request.

15 There is a way that some courts do it. I would not
16 presume to tell this Court how, but TRO frees the status quo
17 address. We've given you a set of very specific --

18 **THE COURT:** I understand. And, again, as you said,
19 judges do these things differently. Some of those requests for
20 TROs were denied anyways, including in similar cases. Other
21 TROs have been modified or reversed when people move too
22 quickly. So I understand the request, though.

23 Okay. Anything else?

24 **MR. EISEN:** Your Honor, may I just quickly flip
25 through my notes? I'm about done.

1 Your Honor, there were a couple of points that came up for
2 the first time on -- on the government's presentation, and I
3 would just -- I would just point the Court to the briefs on
4 this question of the -- the continuing office.

5 We've explained that regardless of title, there's clearly
6 a continuing office here.

7 This is a far cry from the continuing offices cases, like
8 the merchant appraiser in the *Auffmordt* case, or the civil
9 surgeon in *United States v. Germaine*, including giving -- given
10 the executive order establishing DOGE, which I think is
11 unquestionably, on the evidence in the record, inside USAID
12 operating at the direction of Mr. Musk.

13 Remember, we've presented evidence that in addition to
14 what Mr. Musk said before and after that fateful January 30 to
15 February 3rd period, he called USAID in the middle of it to
16 demand access for his people. So that is -- so that is that.

17 So, Your Honor, we will submit -- we will -- oh, I wanted
18 to make one point on separation of powers, since we've been so
19 focused on the appointments clause.

20 I just would point the Court to *NLRB v. Canning*,
21 collecting the cases and highlighting the individual injuries
22 from these type of structural constitutional issues. *City of*
23 *Philadelphia v. Attorney General*, 916 F.3d, where the Third
24 Circuit makes clear what is the point of *Youngstown*, which is
25 that when the executive is acting with no Congressional

1 delegation, he is, in the words of the Court, literally -- he,
2 in the words of the Court, literally has no power to act.

3 And that's a constitutional violation, not a mere backdoor
4 to the APA.

5 So we thank the Court for its indulgence. We will
6 continue to meet and confer, as we have done incessantly, to
7 try to find solutions.

8 To the extent the Court has any question, we think that
9 expeditious discovery -- based on the mountain of evidence
10 we've presented, that expeditious discovery will show that no,
11 there is no paper trail, there is no authorization.

12 But the Court can find that based on that portion of the
13 complaint, the reply brief, and those dozens of affidavits we
14 submitted describing exactly what went on during that period of
15 time when Mr. Musk said he was going to kill USAID, and then at
16 the end of it, said we fed it into the wood chipper.

17 Thank you, Your Honor.

18 **THE COURT:** Thank you.

19 Okay. Thank you for a spirited argument. I appreciate
20 all the information. I have the joint record plus the new
21 exhibits that came in today.

22 I appreciate everyone's patience. These are important
23 issues. I think everyone seems to agree they are not ones that
24 are -- I don't know if I call them issues of first impression,
25 or just ones for which there's no clear legal roadmap that can

1 be easily overlaid to this situation. So I will do my best to
2 get you an answer as soon as possible. But I'll take it under
3 advisement for now.

4 I think, as you said, further discussions among the
5 parties on some of the issues that have been under discussion I
6 think is always a fruitful thing, because I think it -- some
7 sort of voluntary agreement on various things could be helpful
8 for everyone involved.

9 Is there anything else, while we're here, that needs to be
10 discussed or put on the record regarding this case?

11 **MR. GARDNER:** Nothing from the government, Your
12 Honor.

13 **MR. EISEN:** Nothing from plaintiffs, Your Honor.

14 **THE COURT:** Okay. Thank you.

15 **DEPUTY CLERK:** All rise. This Honorable Court now
16 stands adjourned.

17 (Proceedings were concluded at 5:01 p..m.)
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CERTIFICATE OF OFFICIAL REPORTER

I, Paula J. Leeper, Federal Official Court Reporter, in and for the United States District Court for the District of Maryland, do hereby certify, pursuant to 28 U.S.C. § 753, that the foregoing is a true and correct transcript of the stenographically-reported proceedings held in the above-entitled matter and the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 3rd day of March 2025.

/S/ Paula J. Leeper

Paula J. Leeper, RPR, CRR
Federal Official Reporter

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